

1 DB48CHE1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 CHEVRON CORPORATION,

6 Plaintiff,

7 v.

8 11 Cv. 0691 (LAK)

9 STEVEN R. DONZIGER, et al.,

10 Defendants.

11 November 4, 2013
12 9:45 a.m.

13 Before:

14 HON. LEWIS A. KAPLAN
15 District Judge

16 APPEARANCES

17 GIBSON, DUNN & CRUTCHER LLP
18 Attorneys for Plaintiff
19 BY: RANDY M. MASTRO
20 ANDREA E. NEUMAN
21 REED M. BRODSKY
22 JEFFERSON E. BELL
23 ANNE CHAMPION
24 PETER E. SELEY25 FRIEDMAN RUBIN
26 Attorneys for Donziger Defendants
27 BY: RICHARD H. FRIEDMAN
28 DEE TAYLOR29 LITTLEPAGE BOOTH
30 Attorneys for Donziger Defendants
31 BY: ZOE LITTLEPAGE
32 RAINNEY BOOTH33 GOMEZ LLC
34 Attorneys for Defendants Hugo Camacho, Javier Piaguaje
35 BY: JULIO C. GOMEZ

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1 (Trial resumed)

2 THE COURT: Good morning.

3 I have a few things to tell you all.

4 With respect to Chevron's in limine motion number one,
5 there are identified in the motion hundreds of exhibits that
6 Chevron asks be precluded. I think possibly, although I don't
7 remember at the moment, a witness or more. The defense has
8 made no effort in their response to that motion to
9 particularize any basis for admissibility of any of that
10 evidence. I will handle them in exactly the same way I have
11 handled the voluminous evidence offered by Chevron. I will
12 receive them on the same basis, subject to whatever objections
13 have been made, and I will say these additional points.

14 Given the nature of the evidence, or at least what I
15 am told is the nature of the evidence, I will be very
16 disinclined, for reasons already explained, to receive any of
17 it for the truth of any of the matters stated, although I will
18 obviously consider any exhibit that turns out to be material
19 individually. To whatever extent the evidence is offered by
20 the defense for proof of state of mind, the foundation for the
21 receipt of the evidence, if it has not been established
22 already, and if it's objected to for lack of the relevant
23 foundation, is going to have to be established, or if it's
24 material, it's out.

25 That's a preliminary ruling. It's subject to

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1 reconsideration. But that's the way I am going to handle that.

2 Secondly, with respect to the motion to add to the
3 defendants' witness list, Mr. Tarco, the motion is granted on
4 these conditions. First, Mr. Tarco first will have to submit
5 to a deposition in New York in advance, and if you can't agree
6 on the terms of the deposition and the date and so forth,
7 either I or one of the special masters will deal with that.

8 Second, the defendants are directed, as a condition of
9 calling the witness, to produce the computers that allegedly
10 were examined and/or the clones or images of the hard drives
11 and the report referred to in Mr. Tarco's declaration or
12 affidavit, and to do so significantly in advance of the
13 deposition. And if they fail to do any of that, to demonstrate
14 to my satisfaction that they used best efforts to accomplish
15 that.

16 Third, the motion by the defendants to expand the
17 witness list to include Ms. Calva Erazo -- I think I am saying
18 that correctly -- is granted on the condition that she submit
19 to a deposition in New York in advance of her testimony on the
20 same basis I alluded to earlier.

21 Is Mr. Gowan here today?

22 MR. GOWAN: Yes.

23 THE COURT: I will deal with that at a side bar later.

24 I think we are ready.

25 MR. GOMEZ: May I inquire about one particular? Mr.

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1 Zambrano is on the list to testify today. I have informed
2 plaintiff's counsel that I have instructed Mr. Zambrano as a
3 result of the four witnesses who are scheduled before him to
4 arrive in the courthouse at 1 p.m. If it turns out during the
5 morning break that we will need his presence here earlier, I
6 can go down and make sure that he is notified to arrive
7 earlier.

8 With respect to the examinations, plaintiff is calling
9 Mr. Zambrano initially as an adverse witness, and defense was
10 wondering whether on our turn to examine him we would be
11 limited in scope with respect to adverse examination. We are
12 asking ourselves that because we don't know if we need to call
13 Mr. Zambrano back separately later after their examination and
14 defense's examination or whether we will be allowed to go
15 beyond the scope for ours so we can finish the witness and be
16 done.

17 THE COURT: Mr. Mastro.

18 MR. MASTRO: Your Honor, it's not our intention to
19 have to bring back Mr. Zambrano. We look forward to
20 cross-examining him, and if they need to cover some topics
21 outside the scope of ours, we have no problem with that.

22 THE COURT: All right. If you have no problem, then I
23 don't have a problem.

24 MR. MASTRO: Thank you, your Honor.

25 THE COURT: All right. Next witness.

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1 MR. MASTRO: Chevron calls Joseph Kohn. My colleague
2 Andrea Neuman will be putting on the witness.

3 THE COURT: While we are waiting for Mr. Kohn to come
4 in, Mr. Friedman we are making an effort to solve the space
5 issue that has been raised on your side. We lost some time
6 because Mr. Mohan was out sick for part of last week.

7 JOSEPH C. KOHN,

8 called as a witness by the plaintiff,

9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: State your name and spell your last
11 name for the record.

12 THE WITNESS: Joseph C. Kohn, K-O-H-N.

13 THE COURT: Proceed, Ms. Neuman.

14 MS. NEUMAN: Before we start with Mr. Kohn, I would
15 like to let the Court know his counsel, Patricia Hamill, is
16 here this morning, and she is seated over to the right.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MS. NEUMAN:

20 Q. Good morning, Mr. Kohn.

21 A. Good morning.

22 Q. Were you served with a subpoena commanding your appearance
23 in this action?

24 A. Yes.

25 Q. Is that subpoena the reason you're here testifying here

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Kohn - direct

1 today?

2 A. Yes, it is.

3 Q. Did you make the decision to submit a written witness
4 statement rather than sit for a direct examination?5 A. My counsel requested if we could have the opportunity to do
6 that. As I understood the Court's rules, witnesses on direct
7 of the parties were permitted to do so, but as a nonparty we
8 asked if we could proceed that way.9 Q. Did you in fact prepare a written version of your direct
10 testimony?

11 A. Yes.

12 MS. NEUMAN: May I approach the witness?

13 THE COURT: You may.

14 Q. Mr. Kohn, do you have Plaintiff's Exhibit 5600 in front of
15 you?

16 A. Yes.

17 Q. Is this a true and correct copy of your witness statement
18 in this case?

19 A. Yes, it is.

20 Q. Is that your signature that appears on the last page?

21 A. Yes.

22 Q. Is everything that you put forth in Exhibit 5600 true and
23 correct?

24 A. Yes, it is.

25 MS. NEUMAN: Plaintiffs would move the admission of

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Kohn - direct

1 Exhibit 5600 as Mr. Kohn's direct testimony.

2 THE COURT: Received on the same basis as previously.

3 (Plaintiff's Exhibit 5600 received in evidence)

4 MS. NEUMAN: I would pass the witness.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. DONZIGER:

8 Q. Good morning, Mr. Kohn.

9 A. Good morning.

10 Q. Is your witness statement true to the best of your
11 knowledge as you sit here today?

12 A. Yes, it is.

13 Q. Is there anything important related to the *Aquinda* case in
14 Ecuador that you left out of your witness statement?

15 MR. MASTRO: Objection. Form. Scope.

16 THE COURT: Sustained.

17 Q. Sir, you signed your statement on October 15, correct?

18 A. Yes.

19 Q. Did you write your witness statement?

20 A. I wrote -- yes, it is my statement. I worked with my
21 counsel on it, and I wrote the statement as my testimony.

22 Q. Was there any part of your witness statement that you did
23 not draft yourself?

24 A. There is no part that is not my testimony. I worked with
25 my counsel and they were the scriveners of some paragraphs,

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Kohn - cross

1 which I revised or accepted, and others that I wrote from
2 longhand initially myself.

3 Q. Did you have any contact in the preparation of your witness
4 statement with your lawyers from Gibson Dunn?

5 A. Yes.

6 Q. Did your counsel have any contact in the preparation of
7 your witness statement with any lawyers from Gibson Dunn?

8 MS. HAMILL: Objection. Privilege.

9 MR. DONZIGER: The fact that they had contact.

10 MS. HAMILL: To the extent Mr. Kohn would know whether
11 his counsel had any contact with Gibson Dunn would only have
12 been communicated through his counsel, and we would object on
13 the grounds of privilege to that question.

14 THE COURT: What is the question?

15 MR. DONZIGER: The fact of the contacts as opposed to
16 the substance of the conversation is not privileged. He has
17 already testified in his deposition.

18 THE COURT: Mr. Kohn, were you ever present when your
19 counsel had contact with Gibson Dunn on the subject of the
20 question? Yes or no?

21 THE WITNESS: No, your Honor.

22 THE COURT: Next question.

23 MR. DONZIGER: What was the answer?

24 THE COURT: The answer was no.

25 Q. What paragraphs in your witness statement did you not

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2 Kohn - cross

3 draft -- what paragraphs in your witness statement did your
4 lawyer draft as opposed to you?

5 MS. HAMILL: Objection. Privilege.

6 THE COURT: Sustained.

7 MR. DONZIGER: Can I be heard?

8 THE COURT: I have ruled.

9 Q. Aside from your witness statement, have you had any contact
10 with any attorneys from Gibson Dunn over the last, say, three
11 years?

12 A. Yes.

13 Q. Can you describe the first such contact?

14 A. The first contact was in the fall of 2010, prior to the
15 issuance or the commencement by our firm in the Eastern
16 District of Pennsylvania of the matter with respect to our
17 documents and preserving the privilege of those documents and
18 the fact that Chevron was going to initiate a 1782 proceeding
19 and issue a subpoena to our firm.

20 Q. How was that contact initiated?

21 A. Through our attorneys at the Conrad O'Brien firm.

22 Q. Your attorneys initiated that contact on your behalf?

23 A. Yes.

24 Q. What was the purpose of initiating that contact?

25 A. To inform Chevron's attorneys of the procedure that we
planned to utilize, and we were preparing a privilege log of
all of our documents and we would have that done promptly, and

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Kohn - cross

1 were prepared to submit that to a court so a court could rule
2 on whether or not those documents would be produced. And we
3 were trying to do it in an efficient manner for all concerned.

4 Q. Did you yourself have contact with the Gibson attorney?

5 A. I was present at a discussion with them, yes.

6 Q. Who was in the meeting for that discussion with Gibson
7 Dunn?

8 A. Mrs. Neuman, Ms. Neuman, Mr. Edelman. I believe those were
9 the only attorneys from Gibson Dunn. There may have been more.

10 Q. The second name was Edelman?

11 A. I believe Edelman, the gentleman from the Los Angeles
12 office.

13 Q. Where did that meeting take place?

14 A. In the Gibson Dunn office in New York City.

15 Q. Subsequent to that meeting, have there been any contacts
16 between you and attorneys from Gibson Dunn?

17 A. I believe the next contact I had was at my deposition in
18 this matter.

19 Q. So between the fall of 2010, the meeting in the New York
20 office at Gibson Dunn, and your deposition just a few weeks
21 ago, you had no direct personal contact with any attorney at
22 Gibson Dunn?

23 A. That's correct. I think the deposition was more than a few
24 weeks ago, but I can't place the date exactly as I sit here.

25 Q. Your deposition in this case?

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Kohn - cross

1 A. Correct.

2 Q. When you say fall of 2010, can you be more specific? Do
3 you remember a specific date, what month it was?

4 A. I recall it was Election Day 2010, whatever day that was.
5 So the first week of November.

6 Q. In between that meeting and your deposition, did your
7 counsel have contact with Gibson Dunn?

8 MS. HAMILL: Objection. Privileged. Same grounds as
9 before.

10 MR. DONZIGER: I think the fact of the contacts goes
11 directly to that issue. I am not going to inquire as to the
12 substance of any conversation. I think the fact of the
13 contacts is very relevant.

14 THE COURT: Do you, Mr. Kohn, have personal knowledge
15 by virtue of having been present or seeing or hearing any
16 contact between your counsel and Gibson Dunn in the intervening
17 period?

18 THE WITNESS: No, sir, only what I have said.

19 THE COURT: Proceed, counsel.

20 Q. Ms. Hamlon represents you for purposes of this matter?

21 A. Hamill.

22 Q. Did she inform you of any contacts she had with any
23 attorney at Gibson Dunn during this time?

24 MS. HAMILL: Objection. Privilege.

25 THE COURT: Any other ground?

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Kohn - cross

1 Strike that. Let's deal with the privilege. Mr.
2 Donziger.

3 MR. DONZIGER: Sir, the degree of contacts between Mr.
4 Kohn directly or through his counsel with Gibson Dunn goes
5 directly to very important issues with regard to his affidavit.
6 I would like to be able to inquire at least as to the times and
7 the frequency. It won't be very long.

8 THE COURT: Do you have some authority for the
9 proposition that because a communication between lawyer and
10 client is important to the issues, you're therefore entitled to
11 get it?

12 MR. DONZIGER: It is my understanding that issues like
13 who your lawyer is or the fact of certain aspects of
14 representation that don't go to the substance of any privileged
15 communications are fair game.

16 THE COURT: You overstate the principle, sir. You're
17 in fact asking for the substance of the communication.

18 MR. DONZIGER: I am just asking if they occurred, not
19 the substance.

20 THE COURT: The question was, "Did she inform you of
21 any contacts she had with any attorney at Gibson Dunn during
22 this time?" You are asking, what did your lawyer tell you?
23 That's your question.

24 MR. DONZIGER: Can I try to rephrase it?

25 THE COURT: Sure.

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Kohn - cross

1 BY MR. DONZIGER:

2 Q. Did your lawyer, Ms. Hamill, inform you of the fact of any
3 contact she had with Gibson Dunn without getting into the
4 substance of any conversation?5 MS. HAMILL: Objection. Privilege. Same grounds.
6 Communications from counsel for Mr. Kohn to Mr. Kohn.7 THE COURT: I am going to allow it, but do not view
8 this as opening any doors.

9 A. Can you restate the time period you're inquiring about?

10 Q. I am talking about the time period between your meeting in
11 the first week of November 2010 and your deposition in this
12 case.13 A. I was informed of some contacts counsel were together in
14 court proceedings, and other than reporting on court
15 proceedings, I don't recall any other report of contacts.16 Q. In preparation for your deposition in this case, your
17 counsel had contact with Ms. Neuman?

18 A. Correct.

19 Q. How many contacts, if you know, did she have with Ms.
20 Neuman in preparation for your deposition?21 A. I recall they had one meeting, which I was informed of, and
22 I assume there was a phone call or something to schedule that
23 meeting.24 Q. Do you know if Ms. Neuman reviewed your witness statement
25 that you have submitted in this case before it was submitted?

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Kohn - cross

1 A. I assume --

2 MS. NEUMAN: Objection. Lacks foundation. Calls for
3 speculation.

4 THE COURT: Sustained.

5 Q. Did Ms. Neuman review your witness statement, to the best
6 of your knowledge?

7 MS. NEUMAN: Same objection.

8 THE COURT: Same ruling.

9 Q. When you reviewed your witness statement, you reviewed your
10 witness statement before signing it?

11 A. Yes.

12 Q. You went through every paragraph?

13 A. Yes.

14 Q. You read it carefully?

15 A. Yes, I did.

16 Q. Did you get any input from a Gibson Dunn attorney as to
17 what to put in your witness statement?

18 A. All of my discussions were with Mr. Voss and Ms. Hamill at
19 the Conrad O'Brien firm.

20 THE COURT: Is that a no, Mr. Kohn?

21 THE WITNESS: Yes, your Honor, that's no.

22 Q. Sir, was your witness statement given to any attorney at
23 Gibson Dunn before you signed it?

24 A. I don't know.

25 Q. When did you complete the first draft of your witness

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1 statement?

2 MS. HAMILL: Objection. Lacks foundation.

3 THE COURT: Answer it to the best of your ability.

4 A. It was late September or early October, my recollection.

5 THE COURT: Ms. Hamill, you're entitled to object on
6 the ground of privilege, but you're not a litigant in this
7 case.

8 MS. HAMILL: Thank you, your Honor.

9 Q. Do you remember when you made the decision to do a written
10 witness statement?

11 A. It was shortly before the witness statement was prepared.
12 It was all within a period of late in September to the time --
13 the document is dated October 15. There was some time in
14 preparing it, a couple of weeks.

15 Q. Why did you decide to do a written witness statement in
16 this case?

17 A. Just to expedite the time that I would spend in this
18 courtroom.

19 Q. Did anybody from Gibson Dunn request that you prepare a
20 written statement?

21 MS. NEUMAN: Objection. Lacks foundation.

22 THE COURT: Rephrase it.

23 Q. Did any attorney at Gibson Dunn request that you prepare a
24 written witness statement as opposed to testifying live?

25 A. Not that I'm aware of. Again, without getting into

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Kohn - cross

1 privileged discussion with my own counsel, it was something we
2 requested, as I stated.

3 Q. Did you have an agreement with Chevron to testify today?

4 A. No. I am here under subpoena.

5 Q. Is Chevron paying your expenses to travel to New York to
6 testify?

7 A. No, sir.

8 Q. Are they paying anything to your lawyer, her fees?

9 A. No, sir. I did receive the statutory witness fee check.

10 Nothing other than that.

11 THE COURT: Is it still \$40?

12 THE WITNESS: I think it was something more than that
13 because of traveling from Philadelphia.

14 Q. When you say you drafted your witness statement in
15 longhand, the parts you drafted yourself you wrote out on a
16 yellow legal pad?

17 A. I think it was a white legal pad and/or on the draft that
18 Mr. Voss and Ms. Hamill also had been preparing. We worked off
19 of that typewritten document.

20 Q. Can you tell which paragraphs of your witness statement
21 that you did not draft in longhand?

22 MS. NEUMAN: Objection. Asked and answered.

23 THE COURT: Overruled.

24 A. Well, the first paragraph is some of my background. I do
25 recall editing that and making changes in that. The same with

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1 the second paragraph. I think there are -- as I sit here now,
2 I can't recall that I did not have at least some comments or
3 some reordering or restating on.

4 Q. But there are some paragraphs you didn't draft in full,
5 correct?

6 A. Yes. And there may be some that I didn't even make a
7 stylistic change on or a change of a date or something like
8 that.

9 Q. Can I direct your attention to paragraph 4 in your witness
10 statement, please?

11 A. Yes.

12 Q. If you can just look at that and tell me whether or not
13 that is one of the paragraphs you drafted in longhand in full?

14 A. I believe it is one that I at least had some comment upon.

15 Q. You don't have any recollection of actually drafting that
16 whole paragraph?

17 A. I don't have a recollection of who was the original
18 scrivener of that paragraph, whether it was me or one of the
19 other lawyers.

20 Q. When did you hire your counsel at Conrad O'Brien in this
21 case?

22 A. I believe it was in August or September of 2010.

23 Q. Do you have any other counsel that you hired in relation to
24 this case?

25 A. Yes. We have also retained the Susman Godfrey firm.

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Kohn - cross

1 Q. The purpose of Susman Godfrey was what?

2 A. To provide legal advice on a range of matters. They also
3 appeared in the 1782 -- I guess they appeared as counsel in
4 this matter with respect to the subpoena to our firm.

5 Q. Any other counsel other than Susman Godfrey?

6 A. We had also retained the Berger Montague firm with respect
7 to an action we commenced in state court in Philadelphia
8 against you.

9 Q. Other than that firm, are there any other firms you
10 retained in connection with anything relating to the Ecuador
11 cases?

12 A. I don't believe so.

13 Q. Now, shifting gears a bit, you have been involved in the
14 *Aquinda* case since 1993?

15 A. Yes.

16 Q. Your name was on the original complaint filed in the
17 Southern District of New York in that year?

18 A. Yes.

19 Q. In the period of the 1990s, in the *Aquinda* case, your firm
20 drafted most of the pleadings when the case was in New York,
21 correct?

22 A. Yes.

23 MS. NEUMAN: Objection. Relevance.

24 THE COURT: What is the relevance of that?

25 MR. DONZIGER: I wanted to establish what my role was

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Kohn - cross

1 in the case in the 1990s.

2 THE COURT: All right.

3 Q. There were various oral arguments at that time before trial
4 in the appellate courts in this jurisdiction?

5 A. Yes.

6 Q. Lawyers from your firm or Mr. Bonifaz's firm handled those
7 oral arguments, correct?

8 A. Yes.

9 Q. Back in the 1990s, you would agree I had a relatively
10 marginal role in the *Aquinda* case?

11 A. I would not use the term marginal. My recollection is you
12 were involved, I think initially, as a lawyer at the Bonifaz
13 firm, and your role was one of a lawyer, whether it be kind of
14 a younger partner or senior associate working on the matter,
15 and you were involved in different aspects at different times.

16 Q. I was not working for your law firm during that time?

17 A. No.

18 Q. I have never been an employee in your law firm?

19 A. Correct.

20 Q. There came a point when the *Aquinda* case was transferred
21 from New York to Ecuador, right?

22 MS. NEUMAN: Objection. Lacks foundation.

23 THE COURT: Sustained. It's contrary to fact. A fact
24 of which you will take judicial notice it was not transferred
25 to Ecuador.

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Kohn - cross

1 Q. There came a point in time when Judge Rakoff, I believe,
2 granted a motion for forum non conveniens filed by Chevron to
3 move the case to Ecuador, correct?

4 THE COURT: You're misstating it. He granted a motion
5 to dismiss on the grounds of forum non conveniens. That's
6 established fact.

7 MR. DONZIGER: Or removal, dismissal.

8 THE COURT: It does make a difference, Mr. Donziger.
9 They are different points.

10 Q. There came a point in time that the *Aquinda* case was
11 dismissed on grounds of forum non conveniens?

12 A. Correct.

13 Q. At that point, you and your law firm had to make a decision
14 as to whether or not to continue the case in Ecuador, correct?

15 A. Yes.

16 Q. And you made the determination at that point that the case
17 could viably be brought in Ecuador's courts?

18 A. Yes.

19 Q. At that point, you thought that Texaco had committed some
20 sort of wrongdoing down in Ecuador that was actionable,
21 correct?

22 MS. NEUMAN: Objection. Relevance. Scope.

23 THE COURT: Sustained.

24 Q. At that point, you were aware that Chevron and not Texaco
25 was the defendant in the *Aquinda* litigation that was refiled in

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1 Ecuador, correct?

2 MS. NEUMAN: Objection. Assumes facts not in
3 evidence.

4 THE COURT: It's rather a convoluted question because
5 it presupposes that at the time the decision was made to
6 continue the case in Ecuador, Chevron was the defendant. That
7 is to say, the question assumes that before there was a lawsuit
8 there was a defendant.

9 So you might rephrase it, Mr. Donziger.

10 Q. You tell me, Mr. Kohn. When the *Aquinda* case was refiled
11 in Ecuador, who was the defendant?

12 MS. NEUMAN: Objection. It assumes facts not in
13 evidence. Contrary to the record.

14 THE COURT: I take it that the problem is that the
15 *Aquinda* case in New York and the *Aquinda* case in Ecuador are
16 not properly described, the second being a refiling of the
17 first, because the parties were different, the claims at least
18 arguably are different. Is that the gist of the objection?

19 MS. NEUMAN: Right, your Honor.

20 THE COURT: Sustained.

21 Q. There was a case that was refiled in Ecuador that was
22 titled *Aquinda v. Chevron Texaco*, correct?

23 THE COURT: Sustained.

24 There was a case that was filed in Ecuador, the first
25 named plaintiff in which was named Aquinda. Is that right, Mr.

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Kohn - cross

1 Kohn?

2 THE WITNESS: That's my recollection, your Honor.

3 There is a document that is the document. I think it's a fact.

4 THE COURT: Of course.

5 Q. The Aquinda in the Ecuador case is the same person who is
6 the Aquinda in the New York case?

7 A. That was my understanding, yes.

8 Q. The New York case was seeking various remedies?

9 A. Yes.

10 MS. NEUMAN: Objection. Relevance.

11 THE COURT: Sustained.

12 Look, the record in the *Aquinda* case in New York is a
13 matter of public record in this court. I take judicial notice
14 of it and all the filings in it, not for the truth of any of
15 the matters stated, unless there is another basis for doing so,
16 but for the fact that the papers are there.

17 Let's move on.

18 Q. You felt that the *Aguinda* case that was filed in Ecuador,
19 at the time it was filed, was a bona fide litigation, didn't
20 you, sir?

21 A. Yes, I did.

22 Q. You talk in your witness statement about taking a trip to
23 Ecuador in 2006 or 2007?

24 A. 2007, I believe.

25 Q. Do you remember the month you went to Ecuador?

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Kohn - cross

1 A. I believe it was either September or October of 2007.

2 Q. You also testified in your direct that that was the only
3 trip you took to Ecuador since the inception of the Ecuador
4 phase of the *Aquinda* case, correct?

5 A. Correct.

6 Q. Do you remember how long you were in Ecuador on that trip?

7 A. I believe about three days, possibly four days.

8 Q. Did you fly down alone, do you remember?

9 A. I believe I did, yes.

10 Q. Was I with you on that trip?

11 A. You were in Ecuador, and I spent some time in Quito, and I
12 also spent some time in Lago and you did not make the side trip
13 to Lago.

14 Q. It took you a day to travel down to Ecuador, approximately?

15 A. Yes. There is no time change, but it's a long flight, but
16 you still have time that day to do things.

17 Q. Well, at a certain time during that trip to Ecuador, you
18 took a trip to the Amazon rainforest where Texaco operated?

19 A. Yes.

20 Q. You flew down to the Amazon?

21 A. Yes.

22 Q. Do you remember what town you flew into?

23 A. I believe it was Lago or the airport that services that
24 area.

25 Q. How long were you down in that area?

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Kohn - cross

1 A. One full day in the Lago area.

2 Q. You flew down in the morning and flew back in the
3 afternoon?

4 A. Yes.

5 Q. You were down there approximately eight hours or so?

6 A. Yes.

7 Q. What did you do when you were down there?

8 MS. NEUMAN: Objection. Relevance.

9 THE COURT: Sustained.

10 Q. When you arrived in the airport in Lago, who met you?

11 A. I do not recall the names of the individuals, but there was
12 a group of individuals who were active in the Frente. And as I
13 recall, some were named plaintiffs in the lawsuit, and I am
14 trying to recall if Mr. Yanza was there. I do not believe he
15 was. Another gentleman had accompanied me from Quito to Lago,
16 and then we met the other people there and we like a small van
17 or small bus. It was a group of six or seven or eight people.

18 Q. Do you recall the person who accompanied you from Quito to
19 Lago?

20 MS. NEUMAN: Objection. Relevance.

21 THE COURT: What is the relevance of this?

22 MR. DONZIGER: Can we approach to the side?

23 THE COURT: Yes.

24 (Continued on next page)

DB48CHE1

Kohn - cross

1 (At the side bar)

2 THE COURT: Mr. Donziger.

3 MR. DONZIGER: He spends a very large amount of time
4 in his witness statement trying to say that he could not get
5 contact with the Ecuadorian plaintiffs except through me. I
6 don't believe that's true. I want to establish that he had
7 multiple contacts without me being around with the Ecuadorian
8 plaintiffs, not only on this occasion but on other occasions.9 MS. NEUMAN: Mr. Kohn already testified that Mr.
10 Donziger didn't go on the Lago portion of the trip. Now he is
11 just asking detailed questions about who met him at the
12 airport, what he remembers about the people that met him at the
13 airport, where he has already established the only relevant
14 point he has articulated, that he wasn't on the Lago portion of
15 the trip.

16 THE COURT: How long do you expect to go on this?

17 MR. DONZIGER: Very short.

18 THE COURT: Let's see how it goes.

19 (Continued on next page)

DB48CHE1

Kohn - cross

1 (In open court)

2 THE COURT: Overruled.

3 BY MR. DONZIGER:

4 Q. Is there a pending question?

5 THE COURT: Yes. The pending question is:

6 Do you recall the person who accompanied you from
7 Quito to Lago?

8 A. I recall his appearance. I do not remember his name.

9 Q. Do you remember if he was a member of the legal team in
10 Ecuador?11 A. My recollection is he was not an attorney, but he was
12 someone who I believe had been described as a, quote, friend of
13 the case. He may have been some other kind of a professional.
14 He was an Anglo and older gentleman, grayish hair.15 Q. Did that individual serve as your translator that day, do
16 you remember?

17 A. Yes.

18 Q. Do you remember meeting a gentleman when you arrived at
19 Lago named Donald Moncayo?

20 A. I don't recall the name.

21 Q. You know who Humberto Piaguaje is, don't you?

22 A. Yes.

23 Q. Describe to the Court who Humberto Piaguaje is, please.

24 A. He is an individual who lived in the Oriente, who had been
25 involved in the litigation from its inception in New York or

DB48CHE1

Kohn - cross

1 before in '93. I believe he and his family members were named
2 plaintiffs in the New York case, and perhaps he or some subset
3 of his family may have also been listed as the plaintiffs in
4 the case that was filed in Lago. He also holds some positions
5 with respect to his community, and he was one of the leaders in
6 the Frente and in the communities that were affected by the oil
7 exploration.

8 Q. Do you remember if he was with you that day when you toured
9 the region?

10 A. I don't recall Humberto being there that day, but he may
11 have been. I spent some occasions with him.

12 Q. Now, on that trip, did you see any oil contamination?

13 MS. NEUMAN: Objection. Relevance.

14 THE COURT: Sustained.

15 MR. DONZIGER: Can I make a proffer?

16 THE COURT: Yes.

17 MR. DONZIGER: The reason I think this is relevant is
18 because Chevron's view is that Mr. Kohn was filing a fraudulent
19 lawsuit. They are seeking damages or costs relating to
20 uncovering that which were linked to fees he paid to fund the
21 lawsuit. And I think establishing when he believed the lawsuit
22 turned from bona fide to what he calls fraudulent is highly
23 relevant to a number of issues.

24 THE COURT: I have made my ruling.

25 Q. On that trip to Ecuador in 2007, you also were in Quito?

DB48CHE1

Kohn - cross

1 A. Correct.

2 Q. Do you remember how many days you were in Quito?

3 MS. NEUMAN: Objection. Asked and answered.

4 THE COURT: I think it has been. The trip was three
5 to four days. He spent a day on the plane going down. He was
6 eight hours in Lago, plus travel time. It's a matter of
7 subtracting.

8 Q. You were in Quito at least a day?

9 A. It was more than a day, two days in Quito, one day in Lago
10 and traveling.

11 Q. When you were in Quito, did you meet with Pablo Fajardo?

12 A. Yes.

13 Q. Did you meet with any other representatives of the Lago
14 Agrio plaintiffs?

15 A. Mr. Yanza, Mr. Saenz, his name was Juan Pablo, and there
16 were several other individuals working on the lawsuit who were
17 in and out of meetings.

18 Q. Did you meet them in the office where Selva Viva was
19 headquartered?

20 A. There. And also there were meetings in restaurants or in
21 the hotel afterwards.

22 Q. In these meetings, you were able to communicate through a
23 translator?

24 A. Yeah. Either you would translate or Juan Pablo.

25 Q. During these discussions in Ecuador, you don't remember me

DB48CHE1

Kohn - cross

1 trying to interfere in any way with your discussions with the
2 clients, do you, on that trip?

3 A. I recall, and it didn't strike me at the time, that there
4 were particular times where you would say, I have to go over
5 some detailed things with the guys in Spanish and it's
6 technical; if you want to make some phone calls or take a break
7 or something like that, sort of side discussions. But that's
8 my recollection. So there were some separate discussions. I
9 understood they were about technical matters, or you would give
10 me some sort of summary of what was occurring or we were going
11 to talk about this or that. Then we would have other
12 discussions where they were slower going with the translation
13 back and forth.

14 Q. You were able to ask the client representatives on that
15 trip anything you wanted to ask, correct?

16 A. Yes, I was.

17 Q. You had a retainer agreement directly with the clients,
18 your law firm?

19 A. With the Frente, our agreement was with the Frente.

20 Q. It wasn't with my law firm?

21 A. No, sir.

22 Q. How many lawyers were in your law firm in 2003?

23 A. Approximately 16, I believe, 16 or 17.

24 Q. How many lawyers are in your law firm today?

25 A. 13.

DB48CHE1

Kohn - cross

1 Q. In the 2008-2009 period, how many lawyers were in your law
2 firm?

3 A. I don't know. It was in that range. We have been in that
4 range, 15 plus or minus, for ten years or so.

5 Q. Just to be clear, during the time period of your law firm's
6 involvement in the *Aquinda* case, your law firm had no
7 particular expertise in enforcing foreign judgments, did it?

8 A. No.

9 Q. You personally had no expertise, correct?

10 A. Correct.

11 Q. And your law firm as -- let me ask you. Your law firm had
12 no particular expertise litigating anywhere in Latin America?

13 A. Correct.

14 Q. Now, you remember the filing of the complaint in this
15 matter that we are dealing with in Judge Kaplan's courtroom?

16 A. The filing by Chevron of this RICO litigation?

17 Q. Yes.

18 A. I recall it being filed, yes.

19 Q. You remember that was filed on February 1, 2011?

20 A. I wouldn't have recalled that day.

21 Q. Thereabouts though, February 2011?

22 THE COURT: It's a matter of public record. Let's
23 move on.

24 MR. DONZIGER: I am trying to situate the time period.

25 Q. You read that complaint, right?

DB48CHE1

Kohn - cross

1 A. It's very lengthy. I read through it. I did not study it.

2 Q. You know your law firm was named in that complaint?

3 MS. NEUMAN: Objection. It misstates the pleading.

4 THE COURT: Sustained as to form.

5 Q. You know your law firm was mentioned in the complaint?

6 A. Yes.

7 Q. It was mentioned as what Chevron called a, quote, nonparty
8 co-conspirator, correct?

9 A. Something like that. It was co-conspirator is what I
10 remember.

11 Q. You also noticed that you were named in the complaint
12 personally, correct?

13 A. In the same capacity, yes, as co-conspirator.

14 Q. When you read that your law firm and you personally had
15 been named, or mentioned I should say, in this complaint, that
16 upset you, didn't it?

17 A. It concerned me.

18 Q. Well, you learned at a certain point that lawyers who
19 represented the Ecuadorian communities in the *Aquinda* case had
20 been sued by Chevron, correct?

21 A. Yes.

22 Q. By reading that complaint you knew I was a defendant,
23 right?

24 A. Yes.

25 Q. You knew Pablo Fajardo was a defendant?

DB48CHE1

Kohn - cross

1 A. Yes.

2 Q. And subsequently you learned that Patton Boggs has been
3 sued by Chevron?

4 A. Yes. I have become aware of that.

5 Q. And you knew at some point that Cristobal Bonifaz has been
6 sued by Chevron?

7 A. I was aware of that from -- that was unrelated to the
8 action in Ecuador, that was related to some action Mr. Bonifaz
9 commenced in California as I recall, but I know he had been
10 sued in that or there was a claim in that case for sanctions.

11 Q. You knew that Chevron was the plaintiff in that case?

12 A. Either plaintiff or the complainant on a sanctions
13 petition.

14 Q. Do you know a man named Russell Deleon, don't you?

15 A. I know who he is. I have spoken to him on the phone. I
16 never met him.

17 Q. You know that he was a person who had provided financing to
18 the Ecuador Aquinda case, right?

19 A. Yes.

20 Q. You know as you sit here today he has been sued by Chevron?

21 A. I did not know that.

22 Q. Is it fair to say that the RICO case filed by Chevron has
23 put your law firm under some degree of pressure?

24 A. I don't view it that way, no.

25 Q. You haven't felt any pressure from Chevron mentioning your

DB48CHE1

Kohn - cross

1 name in this RICO complaint?

2 A. I did not feel pressure, no. We had been subpoenaed in a
3 1782 case. We had litigated that. There were certain costs
4 and efforts that went into preparing the privilege log, etc.,
5 and I understood what the facts were and that they would come
6 out.

7 Q. You knew, sir, that Chevron could always name your law
8 firm, or I should say amend its complaint to name your law firm
9 as a defendant in the RICO, correct?

10 MS. NEUMAN: Objection. Form.

11 THE COURT: I will allow it.

12 A. I did not believe they would, because as the records were
13 produced in the discovery, I understood, I knew what we knew
14 and what had been disclosed to us, and I did not believe that
15 they would violate Rule 11 and name us.

16 Q. You knew they would amend their complaint and name you?

17 MS. NEUMAN: Objection. Form.

18 A. There was a rule about amending complaints. There are also
19 rules about having factual support. I knew that. And there
20 was a deadline for such amendment, which has long since passed,
21 as I understand the schedule in this case.

22 Q. You understood, did you not, that at the time Chevron filed
23 a RICO complaint, they were seeking money damages from the
24 defendants?

25 A. Yes.

DB48CHE1

Kohn - cross

1 Q. The amount of money damages under the civil RICO statute
2 would treble on the actual damages, you understood that?

3 A. Yes.

4 Q. They were suing based on a \$19 billion underlying judgment
5 in Ecuador for money damages from defendants?

6 MS. NEUMAN: Objection. It misstates the record.

7 THE COURT: I think it does. Sustained. Rephrase it.

8 Q. You understood they were seeking, at a minimum, billions of
9 dollars of money damages against the defendants in the civil
10 RICO case, correct?

11 MS. NEUMAN: Objection.

12 THE COURT: Let me look back at the complaint. I
13 think that's right.

14 (Continued on next page)

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DB47CHE2

Kohn - cross

1 THE COURT: Well, I am afraid that the record in this
2 case is so gigantic that even the computer can't search it very
3 quickly. But my recollection of the complaint is rather
4 different. Does anybody have it here?

5 MS. NEUMAN: Yes, your Honor.

6 MR. DONZINGER: I will rephrase the question.

7 BY MR. DONZINGER:

8 Q. Mr. Kohn, what was your understanding of the damages that
9 Chevron was seeking when it filed its RICO complaint?

10 MS. NEUMAN: Objection. Relevance.

11 THE COURT: Overruled.

12 A. My understanding was they were seeking certain expenses
13 they had incurred in the litigation, defending the underlying
14 case, and I gather -- and also perhaps anything they might have
15 been obligated to pay in Ecuador, although that sort of didn't
16 make sense to me. If they ultimately determined they have to
17 pay it, then how could it have been something they shouldn't
18 have paid?

19 Q. But you knew at that time just the amount of money Chevron
20 was spending on the litigation was substantial, correct?

21 A. Yes.

22 Q. When Chevron's RICO case was filed, was there a concern
23 among the partnership at Kohn Swift & Graf that this could have
24 a negative impact on the law firm?

25 A. There was not a concern that the fact of the RICO case had

DB47CHE2

Kohn - cross

1 changed anything. There had already been the 1782 proceedings,
2 which had begun in December of 2010. With respect to our firm,
3 we had already taken certain action with respect to our
4 involvement in the underlying case, so it had been an ongoing
5 issue.

6 The filing of the RICO case was not a particular -- we
7 were not named as a defendant. There was recitation of its
8 history. Any lawyer who had ever had any association with the
9 case was named a coconspirator, so ...

10 Q. Were you surprised when the RICO case was filed?

11 A. No. My recollection is that Chevron had been publicly
12 saying that it was getting ready to file such a case. That's
13 my recollection. I was not surprised that it had happened.

14 Q. Well, you did have at least some level of concern for your
15 law firm after the RICO case was filed, correct?

16 MS. NEUMAN: Objection. Asked and answered.

17 THE COURT: Overruled.

18 A. I was actually somewhat pleased that we were not named as a
19 defendant.

20 Q. There came a point in time when your law firm was the
21 subject of an article published in the Philadelphia Inquirer
22 about this case, correct?

23 A. There had been several articles in the Philadelphia
24 Inquirer, I believe.

25 Q. Do you remember specifically an article published in

DB47CHE2

Kohn - cross

1 December of 2010 with the title Venerable Center City Law Firm
2 Embroiled in Chevron Fraud Case?

3 A. I recall an initial article during the 1782 proceedings.
4 If that is the date of that article, then I do recall it.

5 MR. DONZINGER: Your Honor, I have a copy of this
6 article; I would like to give it to the witness. I don't have
7 a binder. Can I just approach and ask him a couple of
8 questions?

9 THE COURT: Well, the first thing we do is we mark it
10 as an exhibit.

11 MR. DONZINGER: It's marked as DX 1387.

12 THE COURT: Defendant's Exhibit?

13 MR. DONZINGER: Yes.

14 THE COURT: Let's use the viewer, please.

15 MR. DONZINGER: I'm sorry. Say that again.

16 THE COURT: Use the viewer. We will see if it works
17 this week.

18 THE WITNESS: I see it now.

19 BY MR. DONZINGER:

20 Q. Have you seen this article before?

21 A. Not in this format. I saw it in the actual printed paper.

22 Q. Was it on the front page of the paper, of the Philadelphia
23 Inquirer, when it came out?

24 A. It may have been either that or the front page of the
25 business section. I can't recall.

DB47CHE2

Kohn - cross

1 Q. And this story -- or I should say this story created --
2 well, let me rephrase.

3 This story created attention to your law firm that you
4 really didn't want. Isn't that correct?

5 A. I was not happy with -- well, a story I did not want. This
6 is not the kind of story one wants to have.

7 Q. And when you read it, you assumed, didn't you, that someone
8 from Chevron had some involvement in that story being written?

9 MS. NEUMAN: Objection. Lacks foundation. Calls for
10 speculation.

11 THE COURT: No, I think I will allow it. It goes to
12 the witness's state of mind.

13 A. I only have the one page up here. I don't know if the
14 Chevron people were quoted in this article, in which case --

15 THE COURT: The question, sir, was whether you assumed
16 that Chevron had some involvement in the story appearing.

17 A. I don't recall having an assumption one way or the other.
18 Again, if there's quotes in there, I would assume they talked
19 to them. Beyond that, I have no other assumption that I can
20 remember.

21 Q. Did this article cause any conversations among your law
22 firm's partnership about how to deal with future negative
23 publicity about Chevron's fraud allegations?

24 A. Not that I recall, no.

25 Q. Well, you certainly would want to do everything possible to

DB47CHE2

Kohn - cross

1 avoid having your law firm's name associated with Chevron's
2 fraud allegations, correct?

3 A. Yes.

4 Q. Now, you state in your witness statement that your law firm
5 was pretty much the sole financing entity for the Aguinda case
6 from roughly 1993 to 2007?

7 A. We were certainly the primary one. There were some other
8 payments by others, but we were the overwhelming majority, yes.

9 Q. Now, in your witness statement you testified that I
10 directed your law firm to make payments, isn't that correct?

11 A. Yes.

12 Q. You're not testifying that I controlled payments out of
13 your law firm, are you?

14 A. No.

15 Q. And you and I did not have a contracted that required you
16 to fund the Aguinda case.

17 A. No, there was no such contract as between you and I.

18 Q. So directing your attention to paragraph 37 of your
19 statement.

20 A. What paragraph again, please?

21 Q. 37.

22 A. Yes.

23 Q. When you say at Mr. Donzinger's direction you made a series
24 of wire transfers to Ecuador, that's not accurate, is it, sir?

25 A. No, it is accurate.

DB47CHE2

Kohn - cross

1 Q. Let me rephrase. Money going out of your law firm to any
2 entity involved in the Aguinda case was a decision that
3 somebody in your law firm made ultimately, correct?

4 A. Correct, I believe we did, yes.

5 Q. And there were many times, were there not, where I
6 requested that your law firm fund aspects of the Aguinda case
7 and you refused to fund those aspects, correct?

8 A. I would not say there were many cases. Towards the end of
9 the relationship there were several specific instances I recall
10 where you either indicated you had already made a commitment,
11 or you were requesting some other contractor or payment, which
12 we did not agree to proceed with.

13 But in this timeframe, what paragraph 37 is referring
14 to was the monthly agreed-upon procedure for transferring funds
15 to Selva to deal with the ongoing inspection process and the
16 other expenses in litigation. Those were changed from time to
17 time. There is e-mails from you with respect to specific
18 amounts. We had phone calls with respect to specific amounts.
19 And that's what paragraph 37 is referring to.

20 Q. The wire transfers you refer to in paragraph 37 were wire
21 transfers that you approved personally out of your law firm,
22 correct?

23 A. Yes.

24 Q. And I never made a request for your law firm to wire money
25 to any entity related to the Aguinda case without you first

DB47CHE2

Kohn - cross

1 reviewing it, isn't that correct?

2 A. We reviewed the amount, as I understand -- well, yes, we
3 would review the amount, and we would pay it. We would receive
4 backup for such payments on a delayed basis, which became
5 increasingly delayed over time; so, yes, the fact that the
6 payment, the total amount, was requested, approved, made. The
7 dispersion of those funds is a different matter.

8 Q. And you would occasionally have your law firm make payments
9 related to the Aguinda litigation which I knew nothing about,
10 isn't that correct?

11 A. I'm sure there is some, but certainly the dominant features
12 of the budget were things that you were involved in. There may
13 have been some other I would categorize them as minor payments
14 that you were not involved.

15 Q. Do you recognize this individual right here two seats in?

16 A. I believe that is Mr. Page.

17 Q. Yes. And you remember, don't you, that Mr. Page worked in
18 Ecuador around 2005/2006 as an intern on the case?

19 A. I remember his involvement. I wouldn't have been able to
20 pin the date down without your reference.

21 Q. And do you remember at one point I asked on his behalf if
22 you or your law firm could pay Mr. Page and his then partner
23 who was also a lawyer working on the case an amount of money so
24 they could keep working on the case?

25 A. I remember he did work for a period of time, I remember he

DB47CHE2

Kohn - cross

1 was paid for a period of time, and I remember that he was sort
2 of in and out. At some period of time we may have -- so that's
3 my recollection.

4 Q. You turned down my request that Mr. Page be paid for
5 working on the case at that time, didn't you?

6 A. I recall that he worked for a period of time. I do not, as
7 I sit here today, have a specific recollection of turning down
8 or making a decision that for whatever reason we did not choose
9 to pay Mr. Page's time going forward.

10 I thought he was also in and out of school or had some
11 other commitments. He was in for a period, he's been out for a
12 period, I think he's been back in. I don't recall a specific
13 decision being made on it.

14 Q. But that would be the kind of request I would make that you
15 would personally review before granting, correct?

16 A. Yes.

17 Q. And you did the same thing with regard to a request I made
18 for reimbursement for expenses of another associate I had named
19 Andrew Woods, correct?

20 A. Well, Mr. Woods, I just received -- I started receiving
21 invoices from Mr. Woods without having any foreknowledge that
22 Mr. Woods was working on the matter or was working with you. I
23 inquired about it, and we had some back and forth, and during
24 periods of time we did pay money for Mr. Woods' time, and other
25 times we did not.

DB47CHE2

Kohn - cross

1 Q. And when you did not, you were turning down a request I
2 made that he be reimbursed, correct?

3 A. Correct.

4 Q. There came another point in time where I made a request
5 that you fund a person who could write op-eds about the case.
6 Do you remember that?

7 A. Yes.

8 Q. And you turned down that request, didn't you?

9 A. Yes, that was one of the things I was referring to in terms
10 of the sort of summer/fall 2009 time period. That's my
11 recollection.

12 Q. Now, we always -- you and I would meet on a regular basis
13 from the inception of the Aguinda litigation in Ecuador up
14 until approximately 2009, would you say? 2008?

15 A. Through November of 2009.

16 Q. And during that time, a lot of what we talked about was
17 budget issues, correct?

18 A. Yes, it was some of what we talked about. It was --

19 Q. And I was always mindful, was I not, that your firm had
20 limited resources with regard to funding this case?

21 A. I don't know what you were quote mindful of. The topic
22 would come up. We had issues that we discussed about ranges
23 and, you know.

24 Q. We agreed during those meetings that we were always trying
25 to keep costs at reasonable levels, correct?

DB47CHE2

Kohn - cross

1 A. I agreed. I think there were times when budgets were not
2 followed, and other commitments were made that I would then
3 receive word that this commitment had been made and now we
4 needed to deal with it.

5 Q. At times you had direct contact with a company called -- or
6 representatives of a company called E-Tech, didn't you?

7 A. Yes.

8 Q. And describe your recollection of what E-Tech was?

9 A. E-Tech was a group of scientists or engineers who were
10 involved in the process both of, as I recall, the judicial
11 inspection phase of the case as well as pulling together the
12 evidence with respect to the final global phase of the case.

13 Q. Do you remember the names of the individuals who worked for
14 E-Tech?

15 A. There were some individuals that then also became involved
16 with the Stratus operation, so I can't recall whether
17 Mr. Beltman and Ms. Maest were also with E-Tech, although I
18 thought they had some relationship at one time. There was a
19 Mr. Champ, and another individual whose name escapes me.

20 Q. Do you remember a gentleman named Dick Kamp?

21 A. Yes, I do remember Mr. Kamp.

22 Q. He was with E-Tech, right?

23 A. Yes, that was the other name I was thinking of.

24 Q. And Ann Maest was with E-Tech?

25 A. There was a transition from E-Tech to Stratus. Again, I

DB47CHE2

Kohn - cross

1 don't remember if she was involved with E-Tech as well as
2 Stratus, or substituted.

3 Q. But it was important to you as a plaintiff's lawyer to
4 understand who the experts were that you were paying to perform
5 technical work in Ecuador, correct?

6 A. Yes.

7 Q. And you had conversations with people in E-Tech, before you
8 paid them, about the work they were going to do, correct?

9 A. Yes.

10 Q. And some of those conversations concerned issues of budget,
11 where they made requests to you for financing certain
12 activities, correct?

13 A. Correct.

14 Q. And you reviewed those requests yourself, didn't you?

15 A. Yes.

16 Q. And you did not grant all of the requests that E-Tech made
17 to do technical work in Ecuador, did you?

18 A. I recall a process of discussing things, and both, you
19 know, with you and I and them either on conference calls,
20 sometimes then separately you and I, over what made sense, what
21 was achievable, what was efficient, and then a conclusion was
22 reached for certain phases.

23 There was a frustration on our part that those budgets
24 were frequently not followed, or upon proceeding with the work
25 or being on the ground, other problems would rear their head or

DB47CHE2

Kohn - cross

1 other contingencies arose, etc. So, there was sort of a
2 constant going back and revising and re-evaluating a new
3 request in that process.

4 Q. And you were very much involved in that process, correct?

5 A. I was involved in some of those discussions. I think I
6 found out now there was a number of discussions that I was not
7 aware of. But I thought -- it was certainly my hope that I was
8 being apprised of the significant ones. But again there was a
9 sort of frustration that things had happened, or things had
10 changed, and then we had to take certain actions as a result of
11 that.

12 Q. But you always had access to the American technical
13 advisors that you were paying, correct?

14 A. Correct.

15 Q. In terms of talking to them.

16 A. Correct.

17 Q. Was the financing of the Aguinda case by your law firm an
18 important activity in your law firm?

19 A. Yes.

20 Q. Was the Aguinda case considered by your law firm to be an
21 important litigation relative to the other litigations in your
22 law firm?

23 A. It was an important case. One of the most important? We
24 like to think they are all important, but this was certainly
25 large, and novel, and long-running, and for all of those

DB47CHE2

Kohn - cross

1 reasons, yes, it was important.

2 Q. Did you ever have a Spanish-speaking attorney in your law
3 firm during the time you financed the Aguinda case?

4 A. At the outset of the case in '93 Mr. Malmon was on the
5 case. He was Spanish speaking. From the time of 2003 forward
6 we did not have a Spanish speaking attorney in the office.

7 Q. Did you ever consider hiring a Spanish speaking attorney to
8 help your law firm manage or be involved in the Aguinda case in
9 Ecuador court?

10 A. I never gave it much consideration because of your
11 involvement, and our relationship, and the time you were
12 spending supervising the matter, and the relationship that I
13 understood that we had.

14 Q. You didn't pay very close attention to the developments in
15 the Aguinda litigation during the time it was in Ecuador, did
16 you?

17 A. I did not spend time on the detail of the litigation, the
18 motion practice. I relied upon your information and reports.
19 I relied on the progress that was being made in the case. The
20 inspections were going forward. The inspections were
21 ultimately completed. And I did not get involved in reviewing
22 particular pleadings or motions up until sort of the beginning
23 of 2009 when our firm did make some requests repeatedly to be
24 more involved in those issues.

25 Q. Did you ever read any of the pleadings that were being

DB47CHE2

Kohn - cross

1 filed in the Ecuador court before 2009?

2 A. I certainly read the initial complaint. I think I read
3 some of the matters. There was right away some motion practice
4 by Chevron with respect to whether the proper defendant had
5 been named in that court. I was involved in some of that.

6 Q. You know that I was not a lawyer in Ecuador, correct?

7 A. That was my understanding, that you were not practicing but
8 -- that was my understanding.

9 Q. You know I did not appear in the Aguinda litigation in
10 Ecuador, correct?

11 THE COURT: Define appear, Mr. Donzinger.

12 MR. DONZINGER: Appear formally in court.

13 MS. NEUMAN: Objection. Misstates the facts, your
14 Honor.

15 THE COURT: Sustained.

16 MR. DONZINGER: Are you talking about my physical
17 presence? I was obviously around. I did not appear as a
18 lawyer before the Ecuador court.

19 THE COURT: I think you better ask a different
20 question, counselor.

21 MR. DONZINGER: What's that?

22 THE COURT: You better ask a different question.

23 Q. You knew I was not the lead lawyer in Ecuador, correct?

24 A. My understanding was that at the outset of the case Alberto
25 Wray was the quote lead counsel. You were present. I think

DB47CHE2

Kohn - cross

1 Mr. Bonifaz was present for the first phase of that trial.

2 There were other matters that you had related to me
3 where, as I understood, you had some sort of a speaking role in
4 the case. Whether you were there as a nonlawyer advisor or
5 under some sort of pro hac vice, I didn't get into that detail.
6 But I always understood that either Dr. Wray, or Monica, who
7 was affiliated with his office, and Mr. Fajardo, were, if you
8 would, the lead lawyer; but you were present, you would go to
9 court; you weren't excluded from court proceedings. But I knew
10 you were not a member of the Ecuadorian bar.

11 Q. You know I'm not an expert in Ecuadorian law, correct?

12 MS. NEUMAN: Objection. Argumentative.

13 THE COURT: Sustained.

14 Q. Now, when Alberto Wray -- well, I'll back up. Who is
15 Alberto Wray?

16 A. Alberto Wray was an attorney. He was, as I say, one of the
17 lawyers who filed the case in 2003. He had also submitted
18 declarations or affidavits with respect to the forum non
19 litigation in the '90S. He was, as I understood it, a former
20 member of the Ecuador supreme court, a law professor, and I
21 believe he's affiliated with one of the major U.S. law firms
22 now as well.

23 Q. At the beginning of the Aguinda case he became what in
24 Ecuador was called the *procurador comun*, which means the lead
25 lawyer, correct? That's your understanding?

DB47CHE2

Kohn - cross

1 A. I don't recall hearing that Spanish term. I remember him
2 being presented as the guy who signed the complaint, the one
3 who stood up in court and made the opening arguments and
4 presented the evidence in the first phase of the trial.

5 Q. And you were not present during the initial phase of the
6 trial in Ecuador, were you?

7 A. I was not.

8 Q. And did you ever have any independent conversations with
9 Alberto Wray during the time that he was the lead lawyer in
10 Ecuador?

11 A. I was part of some group conversations with him. I don't
12 recall a one-on-one conversation with him during that time
13 period, but I recall conversations with he, Mr. Bonifaz, you,
14 John Bonifaz, Monica, others.

15 Q. In general you would rely on others to report to you what
16 was happening with the Ecuador case, correct, during that time?

17 A. Yeah, that was essentially the agreement we had with Mr.
18 Bonifaz from the beginning of the case, then with Mr. Bonifaz
19 and Mr. Wray. In the agreements in terms of dividing the
20 responsibilities, we were primarily responsible for U.S.-based
21 litigation; they were responsible for the client relations, the
22 translations. Then obviously Dr. Wray had his own contract
23 with respect to prosecuting the case in Lago.

24 Q. You realized at a certain point in time Dr. Wray stopped
25 being the lead lawyer in Ecuador, correct?

DB47CHE2

Kohn - cross

1 A. I realized he was no longer going to be the day-to-day
2 lawyer particularly in the inspection phase. But up until our
3 withdrawal in November of 2009 it was my understanding he was
4 still involved, and it was being represented that if there was
5 sort of a closing argument type of presentation, he would
6 handle that; that he was being consulted with respect to the
7 preparation of sort of a final trial brief; and that he was
8 onboard to argue that or make that presentation to the trial
9 court and any appeals. But he was not the guy out in the
10 jungle week after week with the inspection process.

11 Q. And there came a point in time when somebody took Alberto
12 Wray's place, correct? That was Pablo Fajardo?

13 MS. NEUMAN: Objection. Misstates the testimony.

14 THE COURT: Well, the witness can answer if he knows.

15 A. Pablo became involved with the day-to-day lawyer in Lago,
16 primarily at the point where the inspections were going
17 forward. I did not view that he had replaced Dr. Wray, because
18 as I understood it, what I just said, for example, appeals,
19 that would be something Alberto Wray would do, closing
20 argument.

21 But Pablo really, as I understand it, had assumed the
22 role of Monica, who had been a more junior lawyer in Dr. Wray's
23 office, and who was the day-to-day lawyer arguing motions,
24 dealing with issues on the inspection, and she would travel
25 back and forth from Quito. That became untenable for her, and

DB47CHE2

Kohn - cross

1 significantly more of an expense than having Mr. Fajardo, who
2 lived in the region, who was represented as hard working and
3 dedicated and capable, and he took on that role of the
4 day-to-day lawyer.

5 THE COURT: And the Monica to whom you were referring,
6 what was the last name, please?

7 THE WITNESS: I do not recall her last name.

8 THE COURT: Was it Parejas?

9 THE WITNESS: That sounds right.

10 THE COURT: P-a-r-e-j-e-s, I believe.

11 Go ahead, Mr. Donzinger.

12 Q. Mr. Kohn, you never met Pablo Fajardo before he became the
13 lawyer in the role you just described, did you?

14 A. No.

15 Q. And you know what a judicial inspection is, don't you?

16 A. I have an understanding of it. You're not an expert on
17 Ecuadorian law; I'm not an expert on Ecuadorian law, but I
18 understand the process that occurred.

19 Q. You know judicial inspections were a critical part of the
20 evidence gathering process in Ecuador, correct?

21 A. Yes.

22 Q. And you never attended a judicial inspection, did you?

23 A. I did not.

24 Q. And you never met any of the Ecuadorian technical experts
25 on the plaintiff's team during the Aguinda case, did you?

DB47CHE2

Kohn - cross

1 A. I don't believe so, unless at the meeting in the fall of
2 2007, the several days in Quito, there were some of those
3 folks.

4 We certainly reviewed a lot of the -- or was shown
5 records that were developed during the inspection process, and
6 there was an individual who was sort of like the librarian, if
7 you will, of those documents. Now, whether that person also
8 was one of the technical experts or not, I don't remember.

9 Q. When you saw those records, what did you conclude after you
10 looked at them?

11 MS. NEUMAN: Objection. Relevance. Form.

12 THE COURT: I'm looking at you, Mr. Donzinger.

13 MR. DONZINGER: I'm trying to show if Mr. Kohn had a
14 belief at that point that the case was a bona fide litigation.

15 THE COURT: Sustained.

16 Q. As you sit here today, can you name one Ecuadorian
17 technical expert that was employed by the plaintiffs in the
18 Aguinda case?

19 A. There was a gentleman, Camino Castro, who was briefly
20 involved or involved for some period of time.

21 Q. Camino Castro?

22 A. I believe that was his name. It was an individual who
23 worked for a time period, and then he was unhappy that he was
24 no longer working, or he was discharged and brought some claim
25 in Ecuador which was denied.

DB47CHE2

Kohn - cross

1 Q. Other than him, you can't name anybody?

2 MS. NEUMAN: Objection. Argumentative.

3 A. No.

4 THE COURT: Sustained.

5 How much longer do you expect to be, Mr. Donzinger?

6 MR. DONZINGER: It's hard to estimate. It depends
7 on --

8 THE COURT: Do your best. Do your best to estimate,
9 please.

10 MR. DONZINGER: To estimate? To speed up? To
11 estimate?

12 THE COURT: To estimate.

13 MR. DONZINGER: At most an hour.

14 THE COURT: All right. We will take a break.

15 (Recess)

16 THE COURT: All right. Let's continue. You may
17 proceed, Mr. Donzinger.

18 MR. DONZINGER: Thank you.

19 JOSEPH KOHN, resumed.

20 CROSS-EXAMINATION (Continued)

21 BY MR. DONZINGER:

22 Q. Mr. Kohn, you don't know the Ecuador civil code provisions
23 on which the Aguinda lawsuit that was filed in Ecuador are
24 based, do you sir?

25 A. I saw references to them in the complaint, but I do not

DB47CHE2

Kohn - cross

1 know them or purport to be knowledgeable about them.

2 Q. And do you know that the issues related to the fraud
3 alleged by Chevron in this case implicate questions of Ecuador
4 law, isn't that correct?

5 THE COURT: Sustained.

6 MR. DONZINGER: Can I be heard? I think this is
7 important, if I may.

8 THE COURT: All right. Briefly.

9 (At the side bar)

10 THE COURT: Mr. Donzinger?

11 MR. DONZINGER: He spends a lot of time in his witness
12 statement talking about how he was completely dependent on me
13 for judgments he was making about the case in Ecuador and for
14 information he was receiving. I want to show and establish
15 that he could have and probably should have taken his own steps
16 to do due diligence and not just rely on me. What I can
17 establish in this line of questioning, which will be very
18 short, is just going to undermine his credibility for saying
19 some of the things he is saying in his witness statement on
20 this issue.

21 MS. NEUMAN: Your Honor, what Mr. Kohn should have
22 done is not relevant. Here Mr. Kohn did in fact rely on Mr.
23 Donzinger, and he testified that Mr. Donzinger lied to him and
24 misled him. So, whether Mr. Donzinger would have been
25 successful in doing that had Mr. Kohn done more due diligence

DB47CHE2

Kohn - cross

1 doesn't seem to be relevant.

2 THE COURT: And your response is?

3 MR. DONZINGER: First of all, I despite with the
4 characterization that I lied to him. But his whole basis to
5 draw the conclusions he draws, the main conclusions that I was
6 lying to him and he was therefore funding a fraudulent lawsuit
7 were based on not only his reliance on me but the fact he did
8 virtually nothing on his own to check out what was going on
9 with the Ecuador case.

10 I just want to establish through a couple of questions
11 that he could have done some very simple things to get his own
12 information independent of me. I think that's very relevant.

13 THE COURT: The question to which the objection was
14 sustained was not in my view a proper question. The ruling on
15 that question stands. We will see where we go.

16 (In open court)

17 THE COURT: Next question, please.

18 BY MR. DONZINGER:

19 Q. Sir, did you or your law firm ever consider hiring an
20 Ecuador law expert to advise you on Ecuador law issues relating
21 to the Aguinda litigation?

22 A. Yes.

23 Q. And did you ever hire an Ecuador law expert?

24 A. We did engage a professor Gidi or Gidi. G-i-d-i is the way
25 he spelled his name. He was -- so for a brief period of time

DB47CHE2

Kohn - cross

1 in 2009 is my recollection.

2 Q. And is this individual American, I mean in the United
3 States?

4 A. He was in the United States. At that time it was my
5 understanding that he was Brazilian by birth, and he was
6 visiting as a professor, I believe, at a U.S. law school or
7 university during that time.

8 Q. And did this professor Gidi actually advise your law firm
9 on questions of Ecuadorian law?

10 A. He tried to, and we started a process, but that coincided
11 with the roadblock of our inability to get a meeting or
12 meaningful discussions with you and the lawyers in the Ecuador
13 legal team about the status of the case, the pending motions,
14 what was taking the time to get to a conclusion, what were the
15 procedures with respect to bringing the case to finality, which
16 were all the reasons we wanted to engage that gentleman or
17 someone with those abilities.

18 Q. Before 2009 your firm never hired an Ecuador law expert to
19 advise you on issues related to the Aguinda case, did it?

20 A. Not separate from Dr. Wray and to a certain extent, lesser
21 extent, Dr. Bonifaz. But I certainly viewed Dr. Wray as an
22 expert in Ecuadorian law, and I had discussions with him with
23 respect to the overall outline of the proof and the process in
24 Ecuador, which appeared to be moving forward on a slow pace but
25 moving as he outlined it to me in the 2003/2004 time period.

DB47CHE2

Kohn - cross

1 Q. But your law firm never hired an Ecuador law expert to
2 advise you on what you were being told by any Ecuadorian lawyer
3 on this case, on the Aguinda case, correct?

4 A. Not prior to 2009, other than what I have already testified
5 to.

6 Q. And you knew that the Aguinda case in Ecuador has a public
7 record that's available for anyone to inspect, right?

8 A. That was my understanding, yes.

9 Q. The conclusions you draw in your witness statement do not
10 rely on any independent assessment of Ecuador law issues, do
11 they?

12 A. No.

13 Q. Your law firm never hired an Ecuador law expert to do an
14 independent analysis to determine whether any of Chevron's
15 claims about fraud were true or not, correct?

16 A. Correct.

17 Q. And to this day, apart from what Chevron has pled and
18 argued, you don't know independently, for example, whether the
19 process that created the Cabrera report was in conformity with
20 Ecuador law or not, right?

21 A. I have an understanding that it appeared not to be because
22 of the denials of that process by members of the plaintiffs'
23 team when the issue was raised.

24 On the other hand, it is my understanding that no
25 court in Ecuador has yet said it was improper. So I have those

DB47CHE2

Kohn - cross

1 competing facts, and I have not reached a conclusion about what
2 the Ecuadorian courts might ultimately determine.

3 Q. So, your testimony is that you do not know of a single
4 decision from any court in Ecuador that the process that
5 created the Cabrera report was fraudulent, correct?

6 MS. NEUMAN: Objection. Relevance. Scope.

7 THE COURT: Sustained. It's effectively been
8 answered, and it's argumentative.

9 Q. Have you read the Cabrera report, sir?

10 A. I have read portions of it. I have not read every page of
11 it.

12 Q. Do you have any reason to dispute that the science in the
13 Cabrera report is anything other than valid?

14 A. Yes, I do.

15 MS. NEUMAN: Objection.

16 THE COURT: The objection is sustained; the answer is
17 stricken.

18 Q. Directing your attention to paragraph 12 of your witness
19 statement.

20 A. Yes, sir.

21 Q. Do you see there you testified that around 2005 or 2006 --
22 I'm sorry -- you say on the bottom, the last sentence of your
23 paragraph, you say that I -- from 2005 onwards I was the person
24 primarily responsible for making day-to-day decisions in the
25 management of the case. Correct?

DB47CHE2

Kohn - cross

1 A. Yes, among those. That's a portion of the sentence, but,
2 yes, that was correctly read.

3 Q. And you still believe that today?

4 A. Yes.

5 Q. Now, you know that during the time period between the
6 filing of the Aguinda case in Ecuador and when you effectively
7 were no longer counsel to the Ecuadorian community-- I believe
8 that was 2010, correct? Well, when did your law firm cease
9 becoming counsel to the Ecuadorian community?

10 A. It was a letter that I sent in November of 2009, I believe
11 it was the 17th or it may be the 27th of November, where we
12 stated our position that given everything set forth in that
13 letter, we could no longer function as counsel.

14 I sent several other letters and communications to the
15 plaintiffs as events unfolded in the U.S., to try to bring
16 their attention to it, and stated our position and possible
17 involvement going forward.

18 Q. Do you consider your letter to the Ecuadorian clients of
19 November 17, 2009 an effective withdrawal of your law firm from
20 the Aguinda case?

21 A. Yes, I do. It so states.

22 Q. So, between the time the Aguinda case was filed in Ecuador
23 and the effective withdrawal of your law firm from the case in
24 November of 2009, you knew that I took many trips to Ecuador,
25 right?

DB47CHE2

Kohn - cross

1 A. Yes.

2 Q. And you knew that because I would tell you.

3 A. Yes.

4 Q. And I would also submit invoices for those trips, and you
5 would reimburse me, correct?

6 A. Yes, sir.

7 Q. And you know during that period of time I was going down to
8 Ecuador usually at least once a month, correct?

9 A. Yes. Sometimes more, sometimes less.

10 Q. And obviously since you were only down there one time, you
11 did not observe what I was doing on the vast, vast majority of
12 those many trips I took, correct?

13 A. Correct. I would receive reports, but I did not personally
14 observe it since I was not there.

15 Q. And other than that one trip you took in 2007, you never
16 sat in on any strategy session with the Ecuadorian legal team,
17 did you?

18 A. There were several discussions in the U.S. that I
19 participated in or sat in. One I recall -- well, so there were
20 several in the U.S., but none in Ecuador other than the one in
21 2007.

22 Q. And other than the one trip you took to Ecuador when we
23 were together, you never observed any interaction I had with
24 Pablo Fajardo in Ecuador, correct?

25 A. Not in Ecuador, correct.

DB47CHE2

Kohn - cross

1 Q. Or any other member of the Ecuadorian legal team, correct?

2 A. Correct.

3 Q. And other than what you could glean from what others would
4 tell you, you had no personal knowledge of how day-to-day
5 decisions were being made in Ecuador with regard to the Aguinda
6 litigation, correct?

7 A. That is correct. You know, we reposed tremendous
8 confidence -- I did personally -- in your abilities and your
9 integrity and your supervision of the matter. We would receive
10 reports, and the case was progressing as reported. And there
11 was litigation in the U.S. that had been spawned by that, which
12 we reviewed those materials as well.

13 Q. Now, when I would work on the Aguinda case -- well, you
14 knew during this period of time I was working either full-time
15 or close to full-time in the Aguinda case, correct?

16 A. Yes.

17 Q. And you knew that the times I was not in Ecuador I was
18 usually in New York or somewhere in the United States?

19 MS. NEUMAN: Objection. Lacks foundation.

20 THE COURT: Overruled.

21 A. Yes, I understood that you lived in New York but that you
22 might have also traveled to other places, but, yeah, primarily
23 that was your work location when not in Ecuador.

24 Q. And other than our meetings now and again and usually in
25 Philadelphia, you never knew what I was doing in New York day

DB47CHE2

Kohn - cross

1 to day working on the Aguinda case, did you?

2 A. Not in the sense of a day to day. I believed during that
3 time period that I was getting a fair and accurate assessment
4 of the tasks at hand; and if, for example, there were issues
5 with respect to the litigation before Judge Sand, we would talk
6 about those. If there was issues with respect to the progress
7 of the inspections, we would talk about those. If there was
8 some proposal for a new or different public relations firm to
9 work on the matter, we would talk about that. But I didn't get
10 day-to-day or, you know, hour-to-hour reports of how you were
11 spending your time.

12 Q. Those interactions were usually by phone or e-mail,
13 correct?

14 A. Primarily phone, secondarily meeting in person, and e-mail
15 third, I would say.

16 Q. You never have been to my New York law office, have you,
17 sir?

18 A. No. As I understood, during that time period you had an
19 office in your apartment or in your home.

20 Q. You have never been to my apartment, have you?

21 A. No, sir.

22 Q. Now, there came a point in time in 2009 when you sent a
23 letter to the client representatives in Ecuador proposing that
24 they consider a settlement with Chevron, correct?

25 A. There was not a quote settlement to consider. It was some

DB47CHE2

Kohn - cross

1 advice or guidelines I gave with respect to a settlement
2 process or a negotiation. Excuse me.

3 Q. Now, you sent -- well, do you remember the letter?

4 A. Yes, I do.

5 Q. Would it help if I gave you a copy? Because I'm going to
6 ask you a few questions about it.

7 A. I remember, but if you want to put it up here.

8 MR. DONZINGER: Your Honor, this is PX 1184.

9 THE COURT: Put it on the viewer.

10 MR. DONZINGER: I have copies. It looks like it's on
11 the viewer, but I have hard copies. I don't need to deal with
12 the hard copies.

13 THE COURT: I think that's right, at least at the
14 moment.

15 Q. Now, in this letter you proposed on page 2 -- if I'm
16 reading it correctly -- that you said we should approach
17 Chevron to see if a settlement can be reached before the end of
18 the year. Right?

19 THE COURT: Well, we are not going to do responsive
20 readings, Mr. Donzinger. You've got it on the screen. If you
21 want to invite his attention to that and then go on and ask a
22 question about it, please feel free.

23 Q. Page 2, please.

24 A. Yes, I see it.

25 Q. So, at that time you were proposing to the clients that

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Kohn - cross

1 they authorize you to approach Chevron for settlement, correct?

2 A. I was suggesting that they think about it, not necessarily
3 to authorize me, but to authorize someone or some group to
4 proceed as I had recommended, yes.

5 Q. And you thought at that point in time in the history of the
6 Aguinda case it was propitious to approach Chevron, right?

7 MS. NEUMAN: Objection. Relevance.

8 THE COURT: What's the relevance?

9 MR. DONZINGER: I would rather not say in front of the
10 witness.

11 THE COURT: Then come to the side bar.

12 (At the side bar)

13 THE COURT: What's the relevance?

14 MR. DONZINGER: First of all, it's hard to argue that
15 I am trying to orchestrate an extortion of a settlement with
16 Chevron if the person who is funding the case is proposing to
17 go get a settlement. That's number one.

18 THE COURT: If what?

19 MR. DONZINGER: If the person who is funding the case
20 is proposing to approach Chevron for settlement.

21 The second issue is this goes to the core of why I
22 believe we can establish he withdrew from the case and turned
23 on me, because he very much wanted to achieve an early
24 settlement that a number of clients considered too low, and I
25 wanted to establish that fact through a couple of questions.

DB47CHE2

Kohn - cross

1 It would be very fast.

2 THE COURT: What's the response?

3 MS. NEUMAN: Your Honor, this timeframe is prior to
4 any 1782s, it's prior to any contact between Mr. Kohn and
5 Chevron, and it's prior to him discovering the underlying
6 facts. So, the facts that he is recommending to his clients, a
7 settlement of a piece of litigation at this point in time, does
8 not appear to me to be probative of anything.

9 THE COURT: Well, as to the first of the arguments, I
10 am unpersuaded.

11 As to the second of the arguments, if the theory is
12 that he turned on Mr. Donzinger -- if that's the way Mr.
13 Donzinger wants to characterize it -- because of a spurned
14 settlement proposal or strategy rather than some other reason,
15 I think I will allow that within limits.

16 (In open court)

17 THE COURT: The objection is overruled.

18 THE WITNESS: Sorry. Could the reporter reread the
19 question?

20 THE COURT: Yes. Could the reporter please read the
21 question back.

22 (Record read)

23 A. I thought for all the reasons set out in the letter it was
24 one of the times, and, yes, that was a time to, for those
25 reasons, to make a phone call, or try to set up a meeting, or

DB47CHE2

Kohn - cross

1 have some discussion among the plaintiffs to determine how best
2 to proceed.

3 Q. And you sent this letter to Luis Yanza and Pablo Fajardo?

4 A. Yes, sir.

5 Q. By e-mail?

6 A. I believe so, possibly with a paper copy as well.

7 Q. You didn't copy me on this letter, did you, sir?

8 A. I would have to look at the cc at the bottom, but you are
9 not an addressee.

10 MR. DONZINGER: Can you show the last page, please.

11 A. It appears I did not send a copy to you.

12 Q. And you knew that when you would send correspondence to the
13 clients in Ecuador in English, that you knew there was somebody
14 in the office who was bilingual who can could translate it for
15 its intended recipients, correct?

16 A. My recollection is I sent a Spanish translation with it.

17 We had a paralegal in our office at that time who was fluent in
18 Spanish, but it may be that I did not send with this letter. I
19 know with some of the correspondence in that time period I
20 would send an English version and our own translated version,
21 not a certified translation but a translation.

22 Q. And there were times you asked someone in the Quito office,
23 like Juan Pablo Saenz, to translate your English correspondence
24 into Spanish for Pablo Fajardo and Luis Yanza?

25 A. I do not recall having a discussion with Juan Pablo about

DB47CHE2

Kohn - cross

1 that. My recollection is either we would send the translation,
2 or we simply sent an English version and assumed it would be
3 translated.

4 Q. And how would your law firm translate it? Did you have
5 someone inhouse who speaks Spanish?

6 A. During that period of time there was a paralegal named
7 Sophia Lopez, who is in some of the documents, who was fluent
8 in Spanish.

9 Q. And Mr. Yanza and Mr. Fajardo responded to this letter at a
10 certain point, correct?

11 A. Yes.

12 Q. And what was their response?

13 A. Their response was in writing, and it was --

14 THE COURT: Well, if it's in writing, I will see it.

15 MR. DONZINGER: Your Honor, DX 1390 is the response,
16 but unfortunately it's in Spanish, and we do not have a
17 translation. Can I just elicit -- I think Mr. Kohn had it
18 translated in his law firm and can answer questions about the
19 response.

20 THE COURT: Well, let's see what we can accomplish.

21 MR. DONZINGER: OK.

22 MS. NEUMAN: Your Honor, we have not previously seen a
23 copy of this document and don't have a translation of it.

24 THE COURT: May I see a hard copy, please.

25 Ms. Neuman, was this document called for by Chevron's

DB47CHE2

Kohn - cross

1 document request?

2 MS. NEUMAN: Yes, your Honor, it would have been
3 responsive.

4 THE COURT: Any dispute about that, Mr. Donzinger?

5 MR. DONZINGER: I'm having a hard time believing I
6 didn't produce this to them.

7 THE COURT: Well, you don't see the Bates numbers on
8 it, do you?

9 MR. DONZINGER: Maybe I didn't. I mean, I was relying
10 on my then counsel to turn over what I thought was everything,
11 so....

12 THE COURT: And when you refer to your then counsel,
13 which counsel are you talking about?

14 MR. DONZINGER: Bruce Kaplan.

15 THE COURT: So that was in the 1782 proceeding several
16 years ago.

17 MR. DONZINGER: I believe so.

18 THE COURT: And then there was another document
19 request in this case, is that right?

20 MR. DONZINGER: Yes. And again I turned over all my
21 stuff to my then counsel in this case, John Keker. So, I don't
22 know why this would not have been produced. Maybe it just fell
23 through the cracks. I don't know.

24 THE COURT: And you are saying this was in your
25 possession in this case? Is that right?

DB47CHE2

Kohn - cross

1 MR. DONZINGER: Actually I can't say that, because it
2 was sent to Mr. Kohn. I'm not even copied on it. I don't know
3 if I have it. I assume.

4 THE COURT: Well, where did you get it from for the
5 purpose of bringing it into this courtroom today?

6 MR. DONZINGER: I don't know. I rely on people who
7 help me with documents. I don't manage documents hardly at
8 all. I don't know where I got it.

9 THE COURT: Did you get this from Ecuador?

10 MR. DONZINGER: It's quite possible, but I don't know
11 for sure. I don't know. I mean I don't know. I mean just so
12 you know, when I made my production I had many, many, many
13 documents from Ecuador in my production.

14 THE COURT: Back in 2010 and '11.

15 MR. DONZINGER: Yeah. And I assume also with what the
16 Keker firm produced in this case.

17 THE COURT: My memory firm is that the Keker firm made
18 it abundantly clear on many occasion that they were not going
19 to produce so much as a single gum wrapper that was in Ecuador,
20 notwithstanding the orders of this court.

21 MR. DONZINGER: This letter predates --

22 THE COURT: Oh, I see the date on it, but it doesn't
23 say anything about when it came into your possession in New
24 York.

25 Why don't you proceed with your examination of the

DB47CHE2

Kohn - cross

1 witness, and we will deal with this document if, as and when it
2 is offered.

3 BY MR. DONZINGER:

4 Q. Mr. Kohn, you remember getting a response from the clients
5 to your letter, correct?

6 A. Yes.

7 Q. And that response is in writing?

8 A. Yes.

9 Q. Do you remember if that response was in Spanish?

10 A. I believe so. And again my recollection is that Ms. Lopez
11 in our office provided a translation to me and the other
12 lawyers in our firm.

13 Q. And so you read the response in English after it was
14 translated?

15 A. Yes.

16 Q. And what did the response say to your letter about
17 settlement?

18 A. It was a paragraph, a short paragraph, that simply said we
19 have discussed this with the plaintiff communities, and we do
20 not desire to discuss or approach settlement with Chevron at
21 this point in time; we are confident they will come to us at
22 some point. And it also I believe expressed confidence in the
23 outcome of the litigation. That was the first paragraph. Then
24 there was the body of the letter that dealt with other issues
25 in terms of the management of the case, dealing with the

DB47CHE2

Kohn - cross

1 multiple requests we had made to meet with the legal team to
2 get an understanding of every pending motion, what were the
3 responses, how could we work together to bring the case to a
4 successful conclusion. It dealt budget issues. It basically
5 stated that the plaintiffs were designating you as the sole
6 decision maker, the sole lead counsel, if you will -- it used
7 U.S. nomenclature -- and our role would be to continue to fund
8 an undefined budget that they estimated to be a million dollars
9 a year or more. They raised certain issues about slowness in
10 our payment of certain bills over time, or that we had not
11 funded certain things or met certain commitments.

12 They made a point that we had been asking for backup
13 material for the monthly payments we had been making, and they
14 said they found that insulting that we were asking for such
15 backup, because it meant we didn't trust them.

16 And that then resulted in my letter of November 17th,
17 which was both a statement of where we stood in particular
18 response to a number of points in their letter.

19 (Continued on next page)

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DB48CHE3

Kohn - cross

1 Q. In their response, they never said you couldn't contact
2 Chevron for settlement, they always said they couldn't do it
3 without their authorization, correct?

4 MS. NEUMAN: Objection. Best evidence.

5 THE COURT: Sustained.

6 Q. You then sent a letter in English back to them in response,
7 correct?

8 A. Again, my recollection is I did provide a Spanish
9 translation at that point, but I could be wrong about that, but
10 my recollection is I did.

11 Q. I am going to refer you to Plaintiff's Exhibit 1187, which
12 is a letter sent from Joe Kohn to Luis Yanza and Pablo Fajardo,
13 dated November 19, 2009.

14 This is a correspondence you sent directly to the
15 clients in Ecuador without going through me, correct?

16 A. It was sent directly to them. I don't know whether you
17 were CC'd on this one.

18 Q. In this letter, you called the position of the clients with
19 regard to the idea of a settlement --

20 THE COURT: Excuse me. Just a second.

21 I think there was a transcription error with respect
22 to the witness's answer.

23 The question a moment ago was: This is a
24 correspondence you sent directly to the clients in Ecuador
25 without going through me?

DB48CHE3

Kohn - cross

1 Please repeat your answer.

2 A. It was directly to Mr. Yanza and Mr. Fajardo, but I do
3 believe there is a CC to Mr. Donziger. I believe we sent it to
4 the three people simultaneously.

5 THE COURT: Go ahead.

6 MS. NEUMAN: Our screen is not working.

7 THE COURT: Mr. Donziger, please proceed.

8 Q. In this letter that you sent, dated November 19, you
9 characterized the position of Mr. Yanza and Mr. Fajardo with
10 regard to a possible settlement approach to Chevron as naive
11 and impractical?

12 THE COURT: Draw his attention to the passage. We are
13 not going to have him just read it back to you, either by
14 affirming your reading or otherwise.

15 Q. Directing your attention to the bottom of page 2 of your
16 November 19 letter. Do you see that?

17 A. Yes.

18 Q. You see where it says, "A. Settlement"?

19 A. I do see that paragraph.

20 Q. At that point you were telling the clients that your advice
21 to them with regard to settlement was better than mine?

22 THE COURT: Your Honor, it says what it says. The
23 answer is stricken. Move on.

24 Q. Do you recognize in this part of the letter that I do not
25 have a lot of experience as a civil litigant, correct?

DB48CHE3

Kohn - cross

1 THE COURT: Mr. Donziger, we set up these ground rules
2 in the pretrial conference before the trial started. You're
3 entitled to draw his attention to the passage, and then if you
4 have a new question, you may ask it. But you just can't try to
5 get a characterization of what is already on the page. That's
6 for closing argument.

7 Q. What was the basis for your belief at that time that
8 Chevron would be open to a settlement?

9 A. The November 10 letter.

10 THE COURT: Is there an objection or not?

11 MS. NEUMAN: Yes, your Honor. Objection. Relevance.
12 Speculation.

13 THE COURT: Sustained.

14 It doesn't help to stand up halfway, Ms. Neuman, and
15 kind of bob.

16 MS. NEUMAN: Understood.

17 Q. At the time you sent this letter about settlement to the
18 clients, your firm was experiencing a rough patch economically,
19 was it not?

20 A. I don't know that it was any rougher than any other year in
21 the time period we have talked about. We are primarily a
22 contingency fee firm. We have peaks and valleys. I would
23 have -- I don't know if there was any particular, quote, rough
24 patch at that moment or that time.

25 Q. Is it fair to say your firm would have made a substantial

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Kohn - cross

1 fee had the settlement number you proposed in your letter had
2 been accepted by Chevron at that time, correct?

3 A. We had agreements with the clients, with the other lawyers,
4 yes, that with that number the clients would have had
5 tremendous relief, the lawyers would have been paid, and it
6 would have been a result, as I state in my letter, that
7 everyone could be proud of achieving, and I stand by the
8 recommendations and the advice that I provided at that time to
9 the clients.

10 Q. You know that about, I don't know, roughly 15 months after
11 you sent that letter there was a judgment handed down in
12 Ecuador in favor of the plaintiffs, correct?

13 A. Right.

14 Q. Do you know the amount of that judgment was roughly between
15 8 and 9 billion dollars in actual damages?

16 THE COURT: Mr. Donziger, this is all very
17 interesting, but everybody knows the amount of the judgment,
18 and so does the witness, and you can make your closing argument
19 when the time comes.

20 Q. There came a point in time, Mr. Kohn, in the next year,
21 2011 --

22 A. 2010 you mean.

23 Q. I apologize. 2010. When you had a meeting with client
24 representatives in your office in Philadelphia?

25 A. I recall that, yes.

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Kohn - cross

1 Q. That was, roughly, in April of 2010?

2 A. Yes.

3 Q. Who was at that meeting?

4 A. Mr. Fajardo was there, Mr. Yanza was there, Mr. Humberto
5 Piaguaje was there. I was there. Mr. Glazer in our law firm
6 was there and Mr. Hillwig in our law firm was there. And Ms.
7 Lopez who acted as a translator.

8 Q. Mr. Glazer was a lawyer in your law firm?

9 A. Yes.

10 Q. So was Mr. Hillwig?

11 A. Yes.

12 Q. I was not present at that meeting, was I?

13 A. No.

14 Q. At that meeting, did you feel constricted in any way in
15 terms of what you could talk to the Ecuadorians about?

16 A. No.

17 Q. At that point you preferred to meet with the Ecuadorians
18 without me present, didn't you?

19 A. I had been requesting an opportunity to meet with them
20 separately. I had met with you separately shortly before that
21 with Mr. Susman and some other people from your office. Would
22 I have also met with you there if you had asked for it? I
23 suppose I would have, but I was perfectly happy to go ahead on
24 this basis.

25 Q. In that meeting in April of 2010, you had discussions with

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Kohn - cross

1 the Ecuadorians about creating a role for your law firm in the
2 *Aquinda* litigation, right?

3 A. Not as you state it. I gave them my best advice that the
4 case appeared to be running over a cliff. I reported that I
5 had stated directly to you at the meeting a week or two or
6 three earlier that I believed you should withdraw from the case
7 in a definitive and public manner, that there should be a
8 smooth transition to other counsel. I said our firm was happy
9 to meet with them, to try to introduce them to capable U.S.
10 lawyers who could fill that role. I gave them my reasons for
11 making those recommendations.

12 I asked them specifically about what was transpiring
13 in the 1782 proceedings involving Stratus in Denver, and that I
14 had concern about that given my meeting with you and the
15 conversation that I had with another attorney at the
16 Constantine firm. Yes, we were open to doing something to try
17 to salvage this case in a way that would be appropriate and
18 lawful and ethical, and I recall I left them with some other
19 materials from some other firms that I had contacted or
20 discussed in a general way about the litigation.

21 Q. At the time of that meeting in April of 2010, your firm
22 still maintained its economic interest in the *Aquinda*
23 litigation, didn't it?

24 A. We had reserved all rights, as I say in the letter of
25 November 19.

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Kohn - cross

1 Q. To try to get more concrete about it, in April of 2010 when
2 you met with the Ecuadorians in your office, your firm still
3 maintained at that point its economic interest, whatever it may
4 have been, in the *Aquinda* litigation?

5 A. We reserved all of our rights to assert those interests at
6 any time we deemed.

7 Q. At that point?

8 A. Yes.

9 Q. Now, at that meeting you told the Ecuadorians that you
10 thought the case had gone off the rails, or something to that
11 effect?

12 A. Yes. I think Mr. Yanza used the expression of, the lawsuit
13 is like a train running down a track, it's been going a long
14 way, and I said you're about to drive it over a cliff.

15 Q. Subsequent to that comment, you know that the Ecuadorian
16 trial court issued a judgment against Chevron, correct?

17 MS. NEUMAN: Objection.

18 THE COURT: Sustained.

19 Q. Now, you would agree, wouldn't you, Mr. Kohn, that it would
20 be unethical to seek a percentage of the recovery in the
21 *Aquinda* case if you believe the case is fraudulent, correct?

22 A. Yes.

23 Q. You have already stated that your law firm has renounced
24 any claim it might have over attorneys' fees in the *Aquinda*
25 litigation, correct?

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Kohn - cross

1 A. Yes. And expenses as well.

2 Q. And expenses?

3 A. Yes.

4 Q. Didn't you say in your witness statement that you were
5 still seeking recovery for expenses?

6 A. I do not believe my witness statement says that. I believe
7 I testified at the deposition that we are no longer seeking or
8 have waived any possible right to expenses, and there is a
9 writing to the client so confirming. I believe the statement
10 may say, quote, fees without specifying expenses as well.

11 Q. I apologize. Do you know what paragraph in your statement
12 that you talk about that?

13 THE COURT: Maybe there is something that needs to be
14 clarified first.

15 Mr. Kohn, whatever it is that you said, did it apply
16 to fees from the plaintiffs in the Ecuadorian litigation, did
17 it apply to a possible recovery against Mr. Donziger
18 personally, or did it apply to both?

19 THE WITNESS: It only applied as to any recovery that
20 the plaintiffs obtained in the underlying lawsuit.

21 THE COURT: Did I understand you earlier today,
22 correct me if I am wrong, to say that you either have a lawsuit
23 against Mr. Donziger personally or that you have reserved the
24 right to bring one?

25 THE WITNESS: I testified that we commenced an action

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Kohn - cross

1 in state court under procedures in Pennsylvania. That action
2 has been withdrawn in light of a tolling agreement that has
3 been entered into.

4 THE COURT: By tolling agreement, explain what you
5 mean.

6 A. An agreement to hold any statute of limitations issues in
7 abeyance until such time as either party determines to withdraw
8 from the tolling agreement.

9 THE COURT: So do I understand correctly that it is
10 your view that you still have the right to bring a claim
11 against Mr. Donziger personally for damages quite apart from
12 any right to participate in any recovery in the Ecuadorian
13 case, is that accurate?

14 THE WITNESS: Yes, sir. Not only Mr. Donziger, but
15 any of the law firms.

16 THE COURT: Let's go on, Mr. Donziger.

17 BY MR. DONZIGER:

18 Q. You and I signed a fee sharing agreement in 2008?

19 A. Yes.

20 Q. This fee sharing agreement that we signed memorializes a
21 split in attorneys' fees from any recovery that my company
22 recovers?

23 MS. NEUMAN: Objection. Best evidence.

24 I believe it's Plaintiff's Exhibit 2352. And we have
25 also located a copy of DX 1390 with a Donziger Bates stamp on

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Kohn - cross

1 it, and a translation, your Honor.

2 MR. DONZIGER: Is that the previous letter?

3 THE COURT: It is.

4 MR. DONZIGER: Does that mean I can use it?

5 THE COURT: I assume it doesn't have your Bates stamp
6 on it otherwise.

7 Q. With regard to our agreement between you and me, or your
8 law firm and my law firm, do you still maintain as you sit here
9 today that you have a claim against any attorneys' fees I might
10 recover personally from any recovery in the *Aquinda* case?

11 A. I believe our firm has disavowed any claim to fees received
12 in the case. I think Judge Kaplan has stated our position that
13 we reserve our rights with respect to possible damages or
14 claims that we have suffered. But I have waived -- our firm
15 has waived any claim to share in legal fees recovered that you
16 might ultimately recover in the underlying case.

17 Q. Do you still consider the agreement signed between your
18 firm and my firm in 2008 to be a valid agreement?

19 A. It was valid at the time. I think it imposed certain
20 duties and obligations on the party to that contract. I have
21 said we have waived any claim to fees that the plaintiffs might
22 ultimately recover, but I am not going to say that that's
23 somehow a nullity or null and void or we have no rights that
24 might pertain to that document in some future litigation.

25 Q. As you sit here today, in your opinion, is that document

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Kohn - cross

1 valid?

2 MS. NEUMAN: Objection. Relevance.

3 THE COURT: Sustained.

4 Obviously, given the history between the witness and
5 Mr. Donziger, it's not surprising that some of these questions
6 possibly go to some future lawsuit that may or may not be
7 brought. But let's try to confine it to this lawsuit. We are
8 having enough trouble doing one at a time.9 Q. You hired Steve Susman to represent your interests with
10 regard to -- one of the things you hired Steve Susman for was
11 to represent your interests with regard to any fee recovery you
12 might have in the *Aquinda* litigation?13 A. We retained Mr. Susman and his firm to advise us and
14 represent us in connection with all issues in November of 2009.
15 I did not know what the future held, and I wanted his advice
16 and counsel for all the reasons that he is a great lawyer.17 Q. Mr. Susman sent a correspondence to me in January 2010,
18 correct?19 A. I recall there was some back and forth with correspondence
20 between you or your lawyer and Mr. Susman.21 Q. At a certain point you authorized Mr. Susman to communicate
22 with my counsel in an effort to achieve a settlement of your
23 claims regarding the *Aquinda* case, correct?24 A. I know there were discussions with respect to a resolution.
25 I don't know whether it was with your counsel. There was

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Kohn - cross

1 another firm that was involved that Mr. Susman had some
2 relationship with, and he had some preliminary discussions
3 with.

4 Q. And those discussions related to you receiving a monetary
5 payment in exchange for the settlement of all of your
6 outstanding fee claims against the *Aquinda* litigation?

7 A. I think those discussions were related to our expense
8 payments that we had made by the time Mr. Susman got involved,
9 but I couldn't be sure. It was some payment from which we
10 would resolve and forever waive any and all claims relating to
11 the underlying litigation, relating to you, other people, and
12 you would be free to try to get new firms into the case, and we
13 would go on.

14 Q. These discussions took place in late 2011, didn't they?

15 A. I cannot place it. My recollection is they were earlier,
16 but I could be wrong.

17 Q. They were in 2011 at some point, right?

18 A. My recollection is they were 2010, but they could have
19 continued. I know at one point Mr. Susman spoke to
20 Mr. Schmeiser. I don't know when that took place.

21 Q. At some point Mr. Susman told you that his conversations
22 with Mr. Schmeiser had produced an actual number that would be
23 acceptable to me and the Ecuadorian plaintiffs as regard to
24 settlement of the claims, correct?

25 A. I don't recall that it ever crystallized. There was some

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Kohn - cross

1 bandying about with numbers. What I recall Mr. Susman telling
2 me, and again, not to waive my privilege --

3 MS. HAMILL: Objection. This is getting into
4 privileged areas.

5 THE COURT: It certainly seems that way to me.

6 Why not, Mr. Donziger?

7 MR. DONZIGER: Should I say it in front of the
8 witness?

9 THE COURT: If you want a side bar, you know how to
10 ask for it. Do you want a side bar?

11 MR. DONZIGER: Yes.

12 THE COURT: All right.

13 (Continued on next page)

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Kohn - cross

1 (At the side bar)

2 THE COURT: Why isn't it privileged, Mr. Donziger?

3 MR. DONZIGER: Mr. Kohn holds himself out to be a
4 highly ethical lawyer, and the fact that he was willing to go
5 as far as to get an actual number that I believe he was willing
6 to accept to settle all his claims goes directly to the issue
7 that he did not believe that this is a fraudulent lawsuit,
8 which is what he asserts in his witness declaration.

9 THE COURT: Ms. Hamill.

10 MS. HAMILL: Two things. One is the time period of
11 those discussions was well before many things came out in this
12 litigation, which absolutely sealed the deal in terms of the
13 fraud here. And the way that your questions are being phrased,
14 you're going into what Mr. Susman told Mr. Kohn in connection
15 with settlement discussions and it's absolutely privileged.

16 THE COURT: Anyone else want to be heard on this?

17 MS. NEUMAN: No, your Honor.

18 THE COURT: Objection sustained.

19 You are just going directly into the attorney-client
20 communications.

21 (Continued on next page)

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Kohn - cross

1 (In open court)

2 THE COURT: Objection is sustained.

3 BY MR. DONZIGER:

4 Q. There came a point in time, sir, in 2011 when you were
5 willing to accept some amount of money in exchange for release
6 of all the claims you had against the Aquinda case, correct?7 A. Yes. I think there was some discussion in the realm of
8 some fraction of the out-of-pocket expenses was the range that
9 was bandied about. It never got to a serious discussion.10 Q. But the release would also include your claim on attorneys'
11 fees?12 A. Yes. I believe the firm had stated we were not seeking
13 fees at that time.14 Q. Now, you testified that you and I signed a tolling
15 agreement?

16 A. Yes.

17 Q. Is there a reason you did not attach the tolling agreement
18 to your witness statement?19 A. I did not think it had anything to do with the testimony
20 that I was being asked pursuant to the subpoena to offer.21 Q. The tolling agreement was executed, was it not, in May of
22 2012?

23 MS. NEUMAN: Objection. Best evidence.

24 THE COURT: Overruled.

25 A. I don't recall the date. That sounds the approximate time.

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Kohn - cross

1 MR. DONZIGER: I am going to offer DX 1388. Can I
2 give copies?

3 THE COURT: I am looking at it right on the screen
4 here.

5 Ms. Neuman, is there any objection to Exhibit 1388?

6 MS. NEUMAN: I have not seen it before, but I don't
7 think I have any objection.

8 THE COURT: Do you want to look at it first?

9 MS. NEUMAN: I would like to take a moment to look at
10 it, your Honor.

11 No objection.

12 THE COURT: 1388 is received.

13 (Defendants' Exhibit 1388 received in evidence)

14 Q. Have you had a chance to review it?

15 A. Yes, I have.

16 Q. That's the tolling agreement -- tolling and standstill
17 agreement signed by you and the respective counsel?

18 A. Yes.

19 Q. The date it was signed by me was May 9, 2012, correct?

20 THE COURT: If you are asking whether that's what it
21 says, it's an unnecessary question. And if you're asking if he
22 has personal knowledge of when you put your signature on it, I
23 have a feeling we are not going to find out from this witness.

24 Q. This agreement was executed in May 2012, correct?

25 A. It appears to be, yes.

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Kohn - cross

1 Q. This agreement tolls any claims you might have against me
2 for reimbursement of your litigation costs or the money you
3 spent on funding the *Aquinda* litigation?

4 THE COURT: It speaks for itself, Mr. Donziger.

5 Q. This tolling agreement is still in effect, isn't it, sir?

6 A. Yes.

7 Q. You have never terminated this tolling agreement, have you?

8 A. No.

9 THE COURT: Not if it's still in effect.

10 Q. So based on this tolling agreement as of today, you are
11 still asserting, at least against me, your claims for
12 attorneys' fees from the *Aquinda* litigation, aren't you?

13 MS. NEUMAN: Objection. Asked and answered.

14 THE COURT: Sustained.

15 Q. Directing your attention to paragraph 25 of your witness
16 statement.

17 A. Yes.

18 Q. How could this tolling agreement not be relevant to the
19 issues you're discussing in paragraph 25?

20 MS. NEUMAN: Objection. Argumentative.

21 THE COURT: Sustained.

22 Q. Is there a reason you didn't disclose the tolling agreement
23 when you put together your witness statement?

24 MS. NEUMAN: Objection. It misstates his statement
25 and the evidence.

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Kohn - cross

1 THE COURT: I don't think it does that. I think the
2 question was asked and answered a little earlier. At page 84
3 of the draft transcript of today.

4 You're up, Mr. Donziger. The objection was sustained.

5 Q. Sir, how did you decide what documents you wanted to attach
6 to your witness statement and what documents you wanted to
7 exclude?

8 MS. HAMILL: Objection. Privileged to the extent it
9 relates to any communication with counsel.

10 THE COURT: Exclude from your answer, Mr. Kohn,
11 anything that would disclose the substance of any
12 communications with counsel. As modified, you may answer.

13 A. It was a process, as I have described earlier, of working
14 with my lawyers, who knew the facts, who knew the case, who
15 knew my testimony, and my judgment of what were the subject
16 matters for which I had been subpoenaed, for which the
17 statement is prepared in the first instance. It is in lieu of
18 direct testimony. So we worked through the deposition and we
19 went through this. I believe I testified about this at the
20 deposition as well.

21 Q. One of those issues, though, in the subpoena was your fee
22 arrangements of the Aquinda plaintiffs, correct?

23 A. There is some reference to it in the document, yes.

24 Q. Just one final area. In November of 2009, you sent a
25 settlement letter to the Ecuadorian plaintiffs, correct?

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Kohn - cross

1 A. Correct.

2 Q. You also sent a second letter after they responded that
3 they don't wish to pursue settlement?

4 A. Yes.

5 Q. In their letter to you, they made numerous complaints about
6 what they felt was the failure to make timely payments to
7 sustain litigation?

8 A. Yes, they did.

9 MR. DONZIGER: No further questions.

10 THE COURT: Mr. Gomez.

11 MR. DONZIGER: Just one little housekeeping.

12 During Mr. Kohn's testimony, I asked a couple of
13 questions that Chevron objected to and you sustained the
14 objection, and I don't feel like I made an adequate proffer.
15 Can I just make one? It will take me all of 15 seconds.

16 THE COURT: OK.

17 MR. DONZIGER: Mr. Kohn testified he saw data -- when
18 he was in Ecuador on that one trip, he was shown data or
19 reports, technical reports, from our team in the Quito office.
20 Then I believe I asked him what did he get from those reports,
21 what data? At that point, there was an objection that I
22 believe was sustained by the Court, and I want to make a
23 proffer as to what I think Mr. Kohn would testify to had he
24 been allowed to answer that question.

25 THE COURT: Let's find the question first.

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Kohn - cross

1 I believe the question that you're referring to was on
2 page 51 of the draft transcript of today's proceedings. And
3 the witness immediately before that said in response to a
4 question, the substance of which isn't pertinent, "I don't
5 believe so, unless at the meeting in the fall of 2007, several
6 days in Quito, there was some of those folks. We certainly
7 reviewed a lot of the -- or were shown records that were
8 developed during the inspection process, and there was an
9 individual who was sort of like the librarian, if you will, of
10 those documents. Whether that American was one of the
11 technical experts, I don't remember."

12 Question -- and this is the one to which I sustained
13 the objection -- "When you saw those records, what did you
14 conclude after you looked at them?"

15 What is your proffer as to what he would have said he
16 concluded after looking at them, if indeed he did any more than
17 cast his eye over a bookshelf full of them for all I know?

18 MR. DONZIGER: My proffer is that he would have
19 concluded that that data showed that scientific data produced
20 by the plaintiffs in the *Aquinda* case in Ecuador showed levels
21 of contamination that exceeded Ecuadorian norms. And he also
22 would have testified that Chevron's data from the *Aquinda*
23 litigation from soil samples would have shown exceedings of
24 Ecuadorian norms in contamination.

25 THE COURT: Mr. Kohn, would you have testified to any

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Kohn - cross

1 of that if I had overruled the objection?

2 THE WITNESS: My recollection is refreshed having had
3 this exchange. Certainly, the statements that counsel just
4 made with respect to what data showed, I do recall those facts.
5 Whether it was from that meeting, from other meetings, or from
6 the materials we submitted to a mediation which was occurring
7 right at that time, we had a mediation brief that made those
8 allegations. So as part of that broader process, I can recall.
9 What I said just from that day looking in the office, I
10 couldn't say one or way or the other.

11 THE COURT: Anything else, Mr. Donziger?

12 MR. DONZIGER: In light of the fact that you got into
13 that area, can I ask more questions about it?

14 THE COURT: Within limits.

15 BY MR. DONZIGER:

16 Q. You referred to a document that was I believe used in a
17 mediation?

18 A. Yes.

19 Q. What was that mediation?

20 A. When?

21 Q. What was the mediation, who was it between?

22 A. It was between the plaintiffs and Chevron.

23 Q. What year was that?

24 A. It began in 2007, and there were sessions with the mediator
25 in November of 2007, and it continued thereafter.

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Kohn - cross

1 Q. Did the plaintiffs in the *Aquinda* case have documents
2 prepared for that mediation that summarized sampling data that
3 was being produced in the *Aquinda* trial in Ecuador?

4 MS. NEUMAN: Objection. Relevance.

5 THE COURT: Did you read any such documents, Mr. Kohn?

6 THE WITNESS: Yes, I did.

7 THE COURT: Documents that plaintiffs had prepared?

8 THE WITNESS: That plaintiffs prepared with respect to
9 mediation, yes, I did, and I participated in the mediation.

10 THE COURT: Go ahead.

11 Q. Can you tell us what the conclusions were with respect to
12 any documents you read in preparation for that mediation with
13 respect to contamination levels in Ecuador?

14 MS. NEUMAN: Objection. Lack of foundation,
15 relevance. Best evidence.

16 THE COURT: You want to be heard?

17 MR. DONZIGER: This goes to the issue of Kohn's state
18 of mind.

19 THE COURT: Which is relevant for this purpose for
20 what reason?

21 MR. DONZIGER: Because Chevron is claiming that all
22 the money it put in for the entirety of the case is not
23 justified because the case was a fraud. There came a point in
24 time, I believe, when Mr. Kohn began to believe, based on facts
25 that happened after this year when this mediation took place,

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Kohn - cross

1 that the case was a fraud.

2 In 2007, he read documents, I believe, and he will
3 testify that this was a bona fide case and that we were winning
4 the case and there was very significant or overwhelming
5 evidence to show that they had contaminated the rainforest in
6 Ecuador, and I would like him to be able to testify to that.

7 MS. NEUMAN: I don't think this witness has any
8 expertise to interpret scientific or technical data in any
9 respect in the way that Mr. Donziger is describing.

10 In addition, on the issue of relevance, the complaint
11 makes quite clear, and I think Mr. Kohn's witness statement
12 makes quite clear, that he was defrauded with regard to the
13 Calmbacher and Cabrera frauds, and that he would not have
14 funded Stratus ghostwriting of the Cabrera report if he knew
15 that was what they were doing. He would not have funded the PR
16 campaign if he had known it was all lies. It's not the
17 allegation of him being defrauded from the outset. The fraud
18 allegations as to Mr. Kohn are very time specific.

19 THE COURT: The objection is sustained.

20 MR. DONZIGER: For the record, the characterizations
21 that Ms. Neuman just made, I dispute every one of them, and I
22 think the witness would not agree with the characterizations
23 just made. I think the Court would be better served if you
24 heard from the witness.

25 THE COURT: The objection is sustained. We are not

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Kohn - cross

1 trying the Ecuadorian pollution case and you are not going to
2 get it in the back door through this witness.

3 MR. DONZIGER: I offer it for his state of mind.

4 THE COURT: I understand that. And when you and he
5 tee off some day in some distant courtroom I hope, should that
6 ever occur, you can have at it, but not now and not here.

7 Mr. Gomez, anything for this witness?

8 MR. GOMEZ: Yes, your Honor.

9 THE COURT: Give me an idea how long you expect to be.

10 MR. GOMEZ: I would say at least a half an hour.

11 THE COURT: Go ahead.

12 CROSS-EXAMINATION

13 BY MR. GOMEZ:

14 Q. Mr. Kohn, when you received the subpoena from Chevron to
15 testify in this case, did that subpoena identify subject
16 matters or topics upon which you would be required to testify?

17 A. I do not believe it did.

18 Q. Did you receive any instructions from anyone other than
19 your attorney -- I will withdraw that.

20 Did you receive any instructions from Chevron's
21 attorneys as to what to include or not include in your witness
22 statement?

23 MS. NEUMAN: Objection. Asked and answered.

24 THE COURT: Sustained. At length, Mr. Gomez.

25 Q. Has Chevron reimbursed you or your firm for any expenses

1 DB48CHE3

Kohn - cross

1 incurred in responding to the document production in the 1782
2 proceeding?

3 A. No.

4 Q. Has Chevron reimbursed you or your firm in any way for the
5 investment you made in the Lago Agrio litigation?

6 A. No.

7 Q. Has Chevron reimbursed you or your firm in any way for any
8 expenses it incurred to prepare your testimony in this case?

9 A. No, sir.

10 Q. Sir, how much has your firm incurred in attorney fees
11 responding to the requests in the 1782 proceedings?

12 MS. NEUMAN: Objection. Relevance.

13 THE COURT: Why is that relevant, Mr. Gomez?

14 MR. GOMEZ: I would like a side bar, your Honor.

15 (Continued on next page)

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Kohn - cross

1 (At the side bar)

2 MR. GOMEZ: Your Honor, the amount of money the firm
3 has incurred in responding to 1782 proceedings and preparing
4 for testimony is an incentive that the Kohn firm has to get
5 this behind them as quickly as possible and to cooperate with
6 Chevron as much as possible to achieve that end and reduce its
7 costs and be done. I think it's relevant to the extent of the
8 cooperation Mr. Kohn has given in this case, and I think we
9 should be able to elicit that kind of information.10 THE COURT: You're going to get an answer to this
11 question and then you're done with it.

12 (Continued on next page)

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Kohn - cross

1 (In open court)

2 MR. GOMEZ: I will rephrase my question.

3 BY MR. GOMEZ:

4 Q. Mr. Kohn, what is the total amount of fees that your firm
5 has incurred responding to Chevron's request either in the 1782
6 proceeding, in depositions, or in this matter?

7 MS. NEUMAN: Objection. Relevance.

8 THE COURT: Overruled.

9 A. I don't know the precise amount. It is substantial. There
10 was a lot of work. Certainly -- I have a general recollection
11 or general knowledge, but I don't have it to the penny.12 Q. Can you estimate if we are talking about hundreds of
13 thousands of dollars or more than a million dollars in fees?

14 A. It's hundreds of thousands of dollars.

15 Q. Is it more than half a million in fees to the best of your
16 knowledge?

17 THE COURT: OK, Mr. Gomez, you have made your point.

18 Move on.

19 Q. Sir, what was your understanding of Pablo Fajardo's role in
20 the litigation in Lago Agrio?21 A. He was an attorney for the plaintiffs and became the prime
22 and a courtroom lawyer for the plaintiffs, primarily with the
23 judicial inspection process, where the courtroom was out in the
24 field at these various well sites.

25 Q. In 2009, when you were exchanging correspondence with him

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Kohn - cross

1 and Mr. Yanza, such as, for example, your letter regarding your
2 settlement proposal, what was his role at that time?

3 A. The same as I have described, counsel, day-to-day lawyer in
4 the case for the plaintiffs.

5 Q. Wasn't it true that he was the lead lawyer in Ecuador in
6 2009?

7 MS. NEUMAN: Objection. Asked and answered.
8 Argumentative.

9 THE COURT: Sustained as to form.

10 Q. Was Pablo Fajardo in 2009 the lead lawyer in charge of the
11 Lago Agrio litigation, sir?

12 A. He was a lawyer who was a day-to-day lawyer running the
13 case. I don't believe there is a term or an order of lead
14 counsel the way we use that term in our litigations in the
15 United States. As I understood it, he was an important lawyer.
16 He was the one who was running the thing on a day-to-day basis.
17 He was the one who had the relationship with the client groups
18 and was looked to for their advice. I also understood that Dr.
19 Wray was still involved in participating or would be available
20 to participate going forward.

21 Q. Was he the principal lawyer to speak on behalf of the
22 clients during the judicial inspections in 2009?

23 MS. NEUMAN: Objection. Asked and answered.

24 THE COURT: Yes. It would be quicker if he answers it
25 once more.

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Kohn - cross

1 A. Yes, and thereafter. The inspections ended and he was
2 continuing a role as the principal spokesperson.

3 Q. Was he the attorney responsible for making the final
4 decisions to what legal positions to take in the litigation in
5 2009 in Ecuador?

6 THE COURT: Do you know that, Mr. Kohn, one way or the
7 other?

8 THE WITNESS: I do not know the answer to that
9 particular question as phrased.

10 Q. What was Luis Yanza's role in the litigation in 2009?

11 A. Luis Yanza had been a founding participant in the Frente,
12 in the community organization that was both a beneficiary slash
13 party of the 2003 case. He was, as I understood it, a
14 respected leader of the various constituencies and community
15 groups and indigenous groups that formed together to pursue
16 this case and other matters. They had other projects and
17 matters that they worked on separate from the lawsuit. I
18 understood he was an accountant by training and that he really
19 was kind of the executive director, if you will, of the Frente.

20 Q. Why did you address your letters to Pablo Fajardo and Luis
21 Yanza?

22 A. Because to me they were the principal contacts with Mr.
23 Donziger to then the other people in the Ecuadorian legal team
24 and communities. They had been represented to me as the
25 leaders of that project in its broadest sense. I had met both

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Kohn - cross

1 of them and communicated with them. I spent some time with
2 them. They had participated in the mediation which began in
3 November 2007. They were present in Washington for those
4 sessions. And to me after Mr. Donziger they were the next
5 contacts in line that I had interfaced with in the case.

6 Q. Did Pablo Fajardo and Luis Yanza have more direct contact
7 with the plaintiffs in the Lago Agrio litigation than Mr.
8 Donziger?

9 MS. NEUMAN: Objection. It lacks foundation.

10 THE COURT: Sustained.

11 Q. Do you know whether Pablo Fajardo or Luis Yanza had more
12 direct contact with the plaintiffs in the Lago Agrio litigation
13 than Mr. Donziger?

14 THE COURT: Do you know of your own personal knowledge
15 by virtue of having observed?

16 A. To a certain extent, I did have personal observations, and
17 I also learned from communications.

18 THE COURT: What people told you?

19 THE WITNESS: Yes, sir.

20 THE COURT: You want to try again, Mr. Gomez.

21 Q. What did you observe that gave you the understanding that
22 Pablo Fajardo and Luis Yanza had the most direct contact with
23 the plaintiffs in the Lago Agrio litigation?

24 MS. NEUMAN: Objection. It misstates the testimony.

25 THE COURT: Sustained as to form.

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Kohn - cross

1 Q. Did you ever observe Pablo Fajardo and Luis Yanza have more
2 direct contact with the Lago Agrio plaintiffs than Mr.
3 Donziger?

4 A. Yes.

5 Q. Please describe your observation.

6 A. As to Mr. Yanza, in addition to the time I was in Ecuador
7 in 2007, I was there on several occasions when the case was
8 pending in the Southern District of New York, and he, A, lived
9 there; B, he would join meetings with myself and Mr. Bonifaz
10 and Mr. Donziger, accompanied by other plaintiffs and other
11 leaders of the different communities or indigenous groups.
12 When he travelled to the United States on occasion with certain
13 smaller groups of the plaintiffs to attend some of the hearings
14 in the Southern District, he was with them. He coordinated
15 their activities. He spoke to them. For all those reasons, he
16 was from those groups. Mr. Donziger, despite the amount of
17 time he was spending there, was not.

18 Q. What about Mr. Fajardo, did you make similar observations
19 as to him?

20 A. He came into the picture later. I did not interact with
21 him as much, but I would place him in the same way as I
22 described for Mr. Yanza. He would arrive at a meeting with
23 other plaintiffs; he was their neighbor, spoke their language,
24 etc.

25 Q. Did Humberto Piaguaje have direct contact with the Lago

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Kohn - cross

1 Agrio plaintiffs?

2 A. I believe he did.

3 Q. You have met with Humberto Piaguaje, is that correct?

4 A. Yes.

5 Q. What was your understanding of his role with respect to the
6 Lago Agrio litigation?

7 MS. NEUMAN: Objection. Relevance.

8 THE COURT: Sustained.

9 Q. Do you know Alejandro Ponce Villacis?

10 A. Yes, I have met him.

11 Q. Who is he?

12 A. He is an attorney who, as I understand it, lives and
13 practices in Quito, who was one of the counsel or was involved
14 as a lawyer for the plaintiffs in the Ecuador case for some
15 limited period of time.

16 Q. Do you remember that period of time, sir?

17 A. It was in or about the time of the mediation we have been
18 talking about. Some before that, and I think it ended shortly
19 thereafter. I believe it just ended shortly thereafter.

20 Q. Do you know whether Pablo Fajardo took instructions from
21 Mr. Ponce Villacis or was it the other way around?

22 MS. NEUMAN: Objection.

23 THE COURT: Or was it some other alternative?

24 Sustained as to form.

25 Q. Do you know whether Mr. Alejandro Ponce Villacis reported

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Kohn - cross

1 to Mr. Fajardo?

2 A. I do not know.

3 Q. Sir, I would like to direct your attention to your letter
4 that has been marked as Plaintiff's Exhibit 1184.

5 Specifically turning to the second page of your
6 letter, the second full paragraph, you write the following
7 sentence: "That is a range that would provide sufficient funds
8 for major remediation, pit clean up, health care, water
9 treatment and other remedies." Do you see that sentence, sir?

10 A. Yes, I do.

11 Q. What were you referring to there when you speak of a "major
12 remediation, pit clean up, health care, water treatment and
13 other remedies"?

14 MS. NEUMAN: Objection. Relevance. The document
15 speaks for itself.

16 THE COURT: I think the last objection is correct.
17 Sustained.

18 MR. GOMEZ: Your Honor, there is an allegation in this
19 case that the defendants engaged in sham litigation. As part
20 of that allegation, under the docket 720 in this case, one of
21 the components is that defendants fabricated what they claimed
22 were expert findings.

23 Mr. Kohn's letter suggests that he has knowledge of
24 conditions and remedies that would be necessary, and I think
25 that those are probative to the issue of whether defendants

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Kohn - cross

1 fabricated this particular evidence. And I think I should be
2 allowed to question Mr. Kohn as to his personal knowledge about
3 items he mentions in letters that he wrote.

4 MS. NEUMAN: The specific fabricated evidence is not
5 generic in the way that Mr. Gomez is describing it. In
6 addition, the fact that Mr. Kohn may or may not have had
7 opinions outside his area of expertise don't seem at all
8 relevant. This isn't even offered for his state of mind.

9 THE COURT: And this was, to my recollection, ruled
10 out of the case months ago, was it not?

11 MS. NEUMAN: Yes, your Honor.

12 THE COURT: Many months ago.

13 MS. NEUMAN: Many.

14 MR. DONZIGER: Your Honor --

15 THE COURT: I am speaking to Mr. Gomez.

16 MR. GOMEZ: Your Honor, I think there hasn't been this
17 sufficient precision as to the fabrication or the extent of
18 fabrication. It's our view that plaintiffs are attempting to
19 show that everything has been fabricated including, quite
20 frankly, the existence of real clients in the case.

21 THE COURT: Well, Mr. Gomez, if that's your argument,
22 the objection is sustained.

23 BY MR. GOMEZ:

24 Q. Mr. Kohn, the clients in Ecuador are not just a list of
25 fictitious names, is that correct?

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Kohn - cross

1 A. To my knowledge, they are not fictitious names.

2 Q. The plaintiffs in the Lago Agrio litigation are real
3 people, correct?

4 A. That was certainly my understanding.

5 Q. And you have met some of those people, isn't that correct?

6 A. Yes, I have.

7 Q. And they are actual people who, to your knowledge, are
8 affected by the actions of Chevron, is that correct?

9 MS. NEUMAN: Objection. Relevance.

10 THE COURT: Sustained.

11 MR. GOMEZ: There are allegations in the complaint --

12 THE COURT: Possibly you didn't hear me. Go on.

13 Q. Turning to the next page of the same correspondence, Mr.
14 Kohn, in the paragraph marked with item number 1.

15 A. It's not yet on my screen.

16 Q. It's 1184, same exhibit, Plaintiff's Exhibit 1184.

17 It's the third page, the paragraph that is marked as
18 item number 1. Towards the bottom you write the following
19 sentence: "No amount of public pressure or press coverage will
20 convince Chevron to pay a settlement if it gets a favorable
21 legal decision on a dispositive issue."

22 Mr. Kohn, what did you mean by that?

23 A. I think it speaks for itself. I stand by it. You could
24 have all the press conferences and scream outrage as much as
25 you wanted. At bottom, this was a lawsuit, and if Chevron won

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Kohn - cross

1 the lawsuit, or got some sort of favorable ruling, they weren't
2 going to offer you 100 cents in settlement, let alone the kind
3 of recommendation I was making to consider in this letter.

4 Q. So your understanding at the time was it didn't matter what
5 was said in the press, or how many public relations campaigns
6 there were, Chevron was not going to settle this case, is that
7 correct?

8 MS. NEUMAN: Objection. It calls for speculation.
9 Lack of foundation. It misstates the letter.

10 THE COURT: That was the opinion he expressed.

11 Q. What was your basis for expressing that opinion Mr. Kohn?

12 A. 30 years --

13 MS. NEUMAN: Objection.
14 A. -- of litigation.

15 THE COURT: I think you just got your answer.
16 Overruled.

17 Q. Turning to the next page of the same correspondence, Mr.
18 Kohn, the paragraph labeled as number 2, the last sentence in
19 that paragraph, sir. Would you please read that to yourself?

20 Why did you refer to the Exxon Valdez case in this
21 correspondence?

22 A. For a variety of reasons or a number of reasons. It was a
23 matter that I had discussed or raised with these gentlemen when
24 we were discussing at other times.

25 Q. Which gentlemen?

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Kohn - cross

1 A. The addressees on this, Mr. Yanza, Mr. Fajardo, and
2 co-counsel.

3 Obviously, it's a case involving a very large verdict
4 against an oil company, and I was pointing out that -- well, it
5 speaks for itself, but that was the reason I referred to that
6 case. It's well-known case.

7 Q. Did you see similarities between the Exxon Valdez case and
8 the Lago Agrio litigation, sir?

9 MS. NEUMAN: Objection.

10 THE COURT: Sustained.

11 Go to your next subject, sir.

12 Q. Mr. Kohn, you testified that you didn't send a copy of this
13 letter to Mr. Donziger. Is it fair to say that you excluded
14 Mr. Donziger because you understood that both Pablo Fajardo and
15 Luis Yanza were in the best position to convey to the clients
16 in Lago Agrio your proposal for settlement of the case?

17 MS. NEUMAN: Objection. Form.

18 THE COURT: Overruled.

19 A. Yes. I thought I had -- the reason I sent it directly to
20 them is I had had these kind of conversations sometimes with
21 them, but to a greater extent with Donziger. I had had a
22 meeting fairly recently before this letter with just myself and
23 Donziger when I raised these very issues. In that meeting
24 Donziger said, well, maybe you should send a letter to the
25 clients and to, quote, vet this, which is what I did. I don't

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Kohn - cross

1 understand why I didn't also copy him as I did on the letter a
2 week later. But there was no consciousness that they were the
3 better ones to communicate with. That was the reason why I
4 structured it that way.

5 Q. But it was your understanding, was it not, if someone was
6 going to persuade the client to engage in settlement
7 discussions, the best people to do that would be Pablo Fajardo
8 and Luis Yanza, isn't that correct?

9 MS. NEUMAN: Objection.

10 THE COURT: Overruled.

11 A. I didn't make the decision of who was best. I knew they
12 had to be involved; they had a very important role to play. I
13 thought they would also very much look to Donziger, and I was
14 hoping they would also look to and want to hear my advice.

15 Q. Do you know one way or the other whether the clients in the
16 Lago Agrio litigation paid greater attention to the
17 recommendations of Mr. Fajardo or Mr. Yanza than Mr. Donziger?

18 THE COURT: Is that question intended to elicit his
19 view as to each one of the 47 plaintiffs individually, or a
20 majority view, or what else?

21 Could you please phrase a question that has a
22 meaningful answer, should you get one?

23 Q. Sir, do you know whether the leaders of the plaintiffs'
24 group were more likely to be persuaded to engage in settlement
25 discussions if the request or proposal came from Mr. Fajardo or

1 DB48CHE3

Kohn - cross

1 Mr. Yanza as opposed to Mr. Donziger?

2 MS. NEUMAN: Objection. Form.

3 THE COURT: Sustained.

4 Q. Were the clients in the Lago Agrio litigation more likely
5 to follow your advice if it was communicated through Mr.
6 Fajardo or Mr. Yanza than through Mr. Donziger?

7 MS. NEUMAN: Objection. Form.

8 THE COURT: Sustained.

9 Q. Did you believe that the clients in the Lago Agrio
10 litigation would be more willing to entertain settlement
11 discussions if those discussions were proposed through Mr.
12 Fajardo and Mr. Yanza as opposed to Mr. Donziger?

13 MS. NEUMAN: Objection. Form.

14 THE COURT: Sustained.

15 Q. Sir, I would like to direct your attention to Plaintiff's
16 Exhibit 1187.

17 MR. GOMEZ: Can we have that on the screen, please?

18 THE COURT: Is there a question?

19 MR. GOMEZ: I am waiting for the document to go up.

20 Q. Mr. Kohn, do you have before you Plaintiff's Exhibit 1187?

21 A. Yes.

22 Q. I would like to direct your attention to the sentence
23 marked item number 1, the key points you're summarizing?

24 A. Yes.

25 Q. Can you describe for us whether you had the utmost respect

1 DB48CHE3

Kohn - cross

2 for Mr. Fajardo and Mr. Yanza at the time that you wrote this
3 letter, November 19, 2009?

4 MS. NEUMAN: Objection. Relevance.

5 THE COURT: Sustained.

6 It's just not a useful exercise that question, Mr.
7 Gomez. You don't persuade somebody of anything, if it actually
8 is your opinion, by saying I have no respect for your
standpoint.

9 Let's move on from there.

10 How much longer, Mr. Gomez?

11 MR. GOMEZ: 15 more minutes.

12 THE COURT: We will take our lunch break here. 10
13 after 2.

14 (Luncheon recess)

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DB47CHE4

Kohn - cross

1 A F T E R N O O N S E S S I O N

2 2:10 p.m.

3 THE COURT: Continue, Mr. Gomez.

4 MR. GOMEZ: Your Honor, before I continue, there were
5 three documents I would like to move into evidence that were
6 mentioned during my colleague's examination of the witness.
7 These are Defendant's Exhibits DX 1387, which was the article;
8 DX 1388, which was the tolling and the stand-still agreement;
9 and then DX 1390, which was the Spanish version of the letter
10 over which it isn't clear whether it had been produced.

11 Plaintiff's counsel has provided me with a copy of the
12 version that was produced as Plaintiff's Exhibit 5609. I would
13 like to mark the version that Mr. Donzinger introduced as 5609A
14 and enter into evidence 5609 and 5609A.

15 THE COURT: First of all, 1388 is in evidence. That
16 disposes of that.

17 Now, as to 1387, that's the letter from Mr. Kohn to
18 Fajardo and Yanza, right?

19 MR. GOMEZ: No, that's the article --

20 THE COURT: I'm sorry, I misspoke. You are correct.
21 What is it? It's a Philadelphia Inquirer article?

22 MR. GOMEZ: Yes, your Honor.

23 THE COURT: What's the purpose of the offer?

24 MR. GOMEZ: The offer is that this article had been
25 published and Mr. Kohn was aware of it at the time.

DB47CHE4

Kohn - cross

1 THE COURT: So, you are not offering it for the truth
2 of the matter.

3 MR. GOMEZ: Correct.

4 THE COURT: Any objection on that basis?

5 MS. NEUMAN: No, your Honor.

6 THE COURT: It's received not for the truth.

7 (Defendant's Exhibit 1387 received in evidence)

8 THE COURT: Now, you lost me on the excursion through
9 the various other exhibit numbers.

10 MR. GOMEZ: OK. So, Mr. Donzinger offered a document
11 which he referred to as Defendant's Exhibit DX 1390. DX 1390
12 purports to be a letter dated November 13, 2009 to Mr. Kohn
13 from Messrs. Fajardo and Yanza. There was a question as to
14 whether the document had been produced. Subsequently
15 plaintiff's counsel found what has been marked as Plaintiff's
16 Exhibit 5609, which has appended to it the same document that's
17 DX 1390 but with a Bates number, a Donzinger Bates number, and
18 also a translation with a certification of the translation.
19 That entirety has been marked as Plaintiff's Exhibit 5609. So
20 I would like to enter 5609 into evidence.

21 THE COURT: And what is 5609A which you mentioned?

22 MR. GOMEZ: So the record is clear, 5609A would be the
23 document that Mr. Donzinger was speaking of in his examination.

24 THE COURT: Can I see these? Because this is still
25 not clear, and maybe it will be clearer if I see them.

DB47CHE4

Kohn - cross

1 All right. Let's just focus on 5609 as it is
2 currently marked, which contains both a Spanish language
3 version and a translation. Now, is there any objection to
4 5609?

5 MS. NEUMAN: Going in not for the truth, there is no
6 objection, your Honor.

7 THE COURT: Any objection on that basis?

8 MR. GOMEZ: No, your Honor.

9 THE COURT: 5609 is received but not for the truth.

10 (Defendant's Exhibit 5609 received in evidence)

11 MR. GOMEZ: Then, your Honor, I have a proffer with
12 respect to my questioning on Plaintiff's Exhibit 1184. That
13 proffer is that --

14 THE COURT: Just a minute.

15 MR. GOMEZ: I'm sorry.

16 THE COURT: So, you are now going to proffer as to
17 what the witness would have said if he had been permitted to
18 answer the question "What were you referring to there when you
19 speak of a major remediation" and some other language? Is that
20 what I am to understand?

21 MR. GOMEZ: Yes, your Honor.

22 THE COURT: All right. And you are representing to me
23 that you have a good faith basis for knowing what he would have
24 said.

25 MR. GOMEZ: Yes, your Honor.

DB47CHE4

Kohn - cross

1 THE COURT: All right, go ahead.

2 MR. GOMEZ: My proffer is that Mr. Kohn would have
3 testified that he believed that his clients, in order to be
4 made whole, were entitled to remediation, pit clean-up, health
5 care, water treatment and other remedies, and the basis for
6 that belief.

7 THE COURT: Well, for what it's worth, I don't think
8 the proffer is actually responsive to the question, but you
9 have made your record.

10 MR. GOMEZ: Thank you, your Honor.

11 JOSEPH KOHN, resumed.

12 CROSS-EXAMINATION (Continued)

13 BY MR. GOMEZ:

14 Q. Mr. Kohn, isn't it correct, sir, that you do not know one
15 way or the other whether legal decisions regarding the Lago
16 Agrio litigation were made either by consensus of the attorneys
17 working on the matter or by one particular attorney?

18 A. I do not know as to every decision in the case.

19 Q. Well, specifically --

20 THE COURT: The question of course postulates that
21 those are the only options, so the answer is worth what it's
22 worth.

23 Q. And, sir, you don't know whether final decisions regarding
24 which issues to bring to the attention of the Lago Agrio court
25 in that case were determined either by consensus or by one

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Kohn - cross

1 particular person.

2 A. No, I don't.

3 MS. NEUMAN: Object to form.

4 THE COURT: I'm sorry?

5 MS. NEUMAN: Form.

6 THE COURT: Sustained as to form. The answer is
7 stricken.

8 Q. Sir, isn't it correct that you do not know one way or the
9 other whether final decisions regarding which issues to bring
10 to the attention of the Lago Agrio court were made either by
11 consensus of the attorneys working on the matter or a single
12 attorney?

13 A. That's right, I do not.

14 MS. NEUMAN: Same question.

15 THE COURT: Same ruling. The answer is stricken.

16 Mr. Gomez, if you insist on putting questions that say
17 you don't know if A and B, where A and B are not the only
18 conceivable alternatives, we will spend a great deal of time
19 with objections being sustained. I am just trying to help you
20 out, sir. It's a problem that you can fix.

21 Q. Sir, you do not know one way or the other how final
22 decisions were made regarding which issues to bring to the
23 attention of the Lago Agrio court, is that correct?

24 A. As a general matter, yes, that is correct.

25 Q. You also don't know how decisions were made in the Lago

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Kohn - cross

1 Agrio litigation with respect to what material to provide to
2 experts in that case, is that correct?

3 A. Yes, that is correct. Again it's a broad question, but as
4 a general proposition, yes.

5 Q. And you also don't know one way or the other how decisions
6 were made as to what evidence to highlight in briefs to the
7 Lago Agrio courts, is that correct?

8 A. Yes.

9 Q. Sir, is it correct that Cristobal Bonifaz was terminated by
10 the plaintiffs?

11 A. That is my understanding, yes.

12 Q. How was that decision made, do you know?

13 A. I have received some information. I received an
14 explanation from certain individuals, so I know what someone
15 else told me, but I will be happy to pass that along.

16 Q. Is it accurate, sir, that a plaintiffs group known as the
17 Assembly of the Affected made that determination?

18 MS. NEUMAN: Objection.

19 THE COURT: The objection is sustained. The witness
20 just told you that he has no firsthand knowledge.

21 Q. Sir, do you know that Alberto Wray was terminated by the
22 plaintiffs in the Lago Agrio litigation?

23 A. I do not know that.

24 Q. And isn't it a fact, sir, that Kohn Swift & Graf was
25 terminated as counsel for the plaintiffs by the plaintiffs,

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Kohn - cross

1 sir?

2 A. We received a letter about six months after we withdrew
3 stating that they were terminating us, yes.

4 Q. Would you please turn to Plaintiff's Exhibit 1406.

5 Can we bring that up on the screen, please.

6 Looking at the first paragraph, Plaintiffs Exhibit
7 1406, Mr. Kohn, you make reference to a letter on July 29,
8 2010. Is that the letter to which you were just referring in
9 your testimony?

10 A. Yes.

11 Q. Mr. Kohn, is it correct that plaintiffs in the Lago Agrio
12 case were members of a larger group called the Assembly of the
13 Affected that represented the 30,000 people alleged to be
14 affected by the contamination that was the subject of that
15 case?

16 MS. NEUMAN: Objection. Relevance.

17 THE COURT: Sustained. Also lack of personal
18 knowledge.19 Look, Mr. Gomez, I don't know what you are doing, but
20 the fundamental rule is personal knowledge. And just asking
21 what did you understand -- you know, what do you understand
22 Einstein's principle of relativity is? Well, if your state of
23 knowledge is relevant, that's one thing; if it's not, you are
24 not somebody who is going to explain it to us.

25 Q. Mr. Kohn, when you visited Ecuador, did you meet with any

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Kohn - cross

1 members of the Assembly of the Affected?

2 A. I believe that I did, yes.

3 Q. And what was the purpose of this group, the Assembly of the
4 Affected?

5 THE COURT: Sustained.

6 Q. Did you observe these members interact as a formal body
7 when you were in Ecuador?

8 MS. NEUMAN: Objection. Relevance. Scope.

9 MR. GOMEZ: I withdraw the question.

10 Q. Mr. Kohn, who did you meet who was a member of the Assembly
11 of the Affected when you were in Ecuador?

12 A. Other than -- I believe Mr. Yanza was a member. I believe
13 Mr. Payaguaje was a member. There were other meetings that I
14 attended I am recalling the period while the case was pending
15 in New York in the '90s where there were large groups of
16 individuals that I understood were either some portion of or
17 some representatives of Community of the Affected, and I
18 understood there were perhaps larger groups or sort of plenary
19 sessions, which I was not present, but that this was a
20 representative council or committee of the leadership of those
21 groups, groups of 20, 30, 40 people.

22 Q. Did the Assembly of the Affected play any role in the Lago
23 Agrio litigation, sir?

24 THE COURT: Do you have personal knowledge, sir?

25 THE WITNESS: Not as to the time in Lago Agrio.

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Kohn - cross

1 THE COURT: Look, Mr. Gomez, this is going to stop
2 what you are doing now. All right? So, go on to something as
3 to which there is some reason to think the witness has personal
4 knowledge or is competent to testify to, or else conclude your
5 examination. You know what the rules are.

6 Q. Mr. Kohn, how many times has Kohn Swift & Graf been named a
7 nonparty coconspirator in a RICO action?

8 A. Just this once.

9 Q. How many times have you been named a nonparty coconspirator
10 in a RICO action?

11 A. Once.

12 Q. How did you find out about the filing of this particular
13 action?

14 A. Either through counsel, or it was very public, things were
15 being announced in the media, and they were available online
16 probably.

17 Q. Were you the first partner in your firm to learn about the
18 existence of this case?

19 A. I don't know. I mean it happened on a certain date, and
20 within 24 hours I assume everybody in the firm was aware of it.

21 Q. How soon after you learned about the RICO case did you
22 discuss it with your partners?

23 A. I would assume as soon as we received it, at least as to
24 those who had worked and been involved in this litigation, we
25 talked about it right away.

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Kohn - cross

1 Q. Did your partners express concern about the allegations in
2 the complaint?

3 A. I do not recall people expressing quote concern. I think
4 there was expression of some disappointment that Chevron had
5 chosen to list us as a coconspirator. We assumed that they had
6 understood the record and what was being produced, such that
7 they would not have taken that position, which ultimately, as
8 all the discovery proceeded, is my understanding of their
9 position as of today.

10 Q. Did your partners have a copy of the RICO complaint?

11 MS. NEUMAN: Objection. Relevance.

12 THE COURT: No, I think it's relevant, but there is no
13 predicate for personal knowledge.

14 Q. Do you know --

15 THE COURT: And the question is vague. One partner?
16 Two partners? Three partners?

17 Q. Did you provide copies of the RICO complaint to your
18 partners to review?

19 A. No. My assumption was everything was available online in a
20 very public manner. I did not make paper copies and distribute
21 them throughout the office.

22 Q. The complaint reads "Kohn Swift has bankrolled the Lago
23 Agrio litigation as one of its flagship cases and funded the
24 coconspirators' other illegal activities."

25 Did you discuss that particular allegation with your

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Kohn - cross

1 partners, sir?

2 A. I don't recall that particular allegation. I certainly
3 recall the general theme of the complaint, the tone. There
4 were general discussions. We had very able counsel that had
5 been representing the firm in the 1782 proceedings; they were
6 aware of the complaint. We were following their advice, and
7 that was the way we dealt with it.

8 Q. Did you receive telephone calls from colleagues about the
9 fact that Kohn Swift & Graf had been named in this complaint,
10 sir?

11 A. I don't remember receiving phone calls from other
12 colleagues at the time the complaint was filed.

13 Q. Did you receive any calls from any client bringing to your
14 attention their knowledge that Kohn Swift & Graf had been named
15 in this complaint?

16 A. I don't recall any.

17 Q. Isn't it true that your partners agreed that Kohn Swift &
18 Graf should cooperate with Chevron to ensure that the matter
19 did not escalate any further than being named a nonparty
20 coconspirator?

21 A. That is not true.

22 Q. You testified that you were pleased Kohn Swift & Graf was
23 not named as a direct defendant in this case, is that correct?

24 A. Yes. I would have been happier if we weren't mentioned at
25 all, but in terms of being named a party defendant or being

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Kohn - cross

1 listed with a bunch of other lawyers as an unnamed
2 coconspirator, I was happier to be in that category than to be
3 a named defendant.

4 Q. Didn't you and your partners agree that you would cooperate
5 with Chevron to ensure that you would only remain as unnamed
6 defendants in the case?

7 MS. NEUMAN: Asked and answered.

8 A. No.

9 THE COURT: Sustained.

10 Mr. Gomez, I have your point; I had it actually by
11 about 11 o'clock this morning, some hours ago. Your argument
12 in substance is that the testimony should not be credited
13 because, among other things, they are trying to curry favor
14 with Chevron to avoid being sued. Got it.

15 Now, I imagine it is theoretically possible to ask
16 questions having that point for several more days, but we're
17 not going to do it. Move on.

18 Q. Mr. Kohn, you have no knowledge that plaintiffs in the Lago
19 Agrio litigation, or their attorneys, paid anyone to ghostwrite
20 orders for any judge in that case, do you, sir?

21 A. I have no knowledge of it, other than what I have seen in
22 the press accounts of this litigation.

23 THE COURT: And you have no knowledge to the contrary,
24 isn't that right?

25 THE WITNESS: Yes, sir.

DB47CHE4

Kohn - cross

1 THE COURT: Move on, Mr. Gomez.

2 Q. And, sir, you also have no knowledge that plaintiffs or
3 their attorneys bribed the judge who issued the decision in
4 that case, isn't that right?

5 A. Same answer, only from what I have seen in the press
6 reports.

7 Q. And you have no knowledge to the contrary, is that correct?

8 A. Right.

9 || MR. GOMEZ: Your Honor, I'm done.

10 THE COURT: Thank you. Is there any redirect?

11 MS. NEUMAN: A little bit, your Honor.

12 THE COURT: Go right ahead.

13 REDIRECT EXAMINATION

14 BY MS. NEUMAN:

15 Q. Good afternoon, Mr. Kohn.

16 A. Good afternoon.

17 Q. Do you recall Mr. Donzinger asked you a number of questions
18 relating to his role in the Ecuador litigation?

19 A. Yes.

20 Q. I am going to ask that we put on the screen Plaintiff's
21 Exhibit 1181, which is in evidence. I'd like to direct your
22 attention, Mr. Kohn, to the second page of Exhibit 1181. Do
23 you recognize Exhibit 1181 as an e-mail exchange between
24 yourself and Mr. Donzinger November 2009?

25 A. Yes, I do.

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Kohn - redirect

1 Q. I would like to direct your attention to the paragraph
2 beginning with the number 1. Would you please read that
3 paragraph to yourself for a moment.

4 A. OK.

5 Q. In November of 2009 did Mr. Donzinger's primary obligations
6 include running the case on a day-to-day basis, as he states in
7 Exhibit 1181?

8 A. It did. And the issues we were having was to whether or
9 not our firm also needed additional information and more
10 participation and more involvement in those things, but at that
11 point, yes, he was.

12 Q. And did Mr. Donzinger's responsibilities include, as he
13 states in Exhibit 1181, handling press and political aspects
14 both in Ecuador and the U.S.?

15 A. Again, same answer, he was involved. We had some role. We
16 were seeking to be more involved with those activities.

17 Q. And am I understanding you correctly that part of the issue
18 that you were having with Mr. Donzinger, including in November
19 of 2009, was that he took the position that it was his job to
20 run the case and your firm's job to pay the bills?

21 A. Essentially, yes.

22 Q. I would like to direct your attention, Mr. Kohn, to Exhibit
23 1185, also in evidence. In the middle of the page there is an
24 e-mail exchange between yourself and Juan Pablo Saenz also from
25 November of 2009. Do you see that, sir?

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Kohn - redirect

1 A. Yes, I do.

2 Q. Is that the gentleman that you were referring to as Juan
3 Pa?

4 A. Yes, it is.

5 Q. And in November of 2009 were the Ecuadorian attorneys
6 refusing or declining to meet with you and your firm?

7 A. And had been for a period of some time before then as well.

8 Q. In Exhibit 1185 Mr. Saenz tells you that Steven is our
9 point of contact, so please coordinate with him about the best
10 way to proceed.

11 Do you see that?

12 A. Yes, I do.

13 Q. And was this the response you were generally receiving from
14 Ecuadorian counsel at this point in time, that you should deal
15 with Mr. Donzinger?

16 A. At that point and some time before then.

17 Q. Now, I would like to go back a little bit in time to
18 earlier in the fall of 2009.

19 Could you please put Plaintiff's Exhibit 1155 on the
20 screen. This is also already in evidence.

21 Mr. Kohn, do you recognize Plaintiff's Exhibit 1155?

22 A. Yes.

23 Q. Could you tell me what this is, sir.

24 MR. DONZINGER: Objection, your Honor. This isn't in
25 the direct testimony.

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Kohn - redirect

1 THE COURT: This is redirect.

2 MR. DONZINGER: What?

3 THE COURT: This is redirect.

4 MR. DONZINGER: It wasn't crossed on.

5 THE COURT: Oh, I don't know about that. It seems to
6 me we heard an awful lot from you on cross about Mr. Kohn not
7 making any efforts to look into what was going on in Ecuador.
8 You opened this door very wide.

9 Q. Mr. Kohn, could you tell us what Exhibit 1155 is, please.

10 A. Yes. It is a first -- or a draft on a final form document
11 of a proposed retention agreement between the plaintiffs group
12 or our law firm -- just our law firm -- and the Trujello
13 Rodriguez & Richards law firm in Philadelphia, specifically
14 Kenneth Trujello, who is the named partner and founder of the
15 firm.

16 Q. And had you reached out to Mr. Trujello to do an
17 investigation in connection with the Ecuador litigation?

18 A. Yes.

19 Q. And among the things you wanted Mr. Trujello to
20 investigate, did they include the allegations that the
21 plaintiffs team had had improper contact with court-appointed
22 experts, including Mr. Cabrera?

23 A. I just have the first page of this in front of me. I
24 believe at some point that was included in a list of tasks.
25 The genesis of this was the publicity surrounding the

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Kohn - redirect

1 allegations about Judge Nunez and the people who recorded his
2 conversation with the camera in the pen. But I believe there
3 is references also to other issues or other contentions that
4 had been made by Chevron that we were interested in trying to
5 get a fresh and detailed investigation of.

6 Q. Directing your attention to the second sentence in the
7 first paragraph, where you state, "More specifically, we
8 request that your firm make inquiries into what knowledge
9 members of the legal team prosecuting the Aguinda litigation
10 may have of improprieties involving the judge and/or government
11 or ruling party officials ..."

12 Do you see that?

13 A. Yes.

14 Q. Is that referring to an investigation into the Nunez tapes
15 and why Judge Nunez would have been meeting with people
16 discussing the case outside of the courtroom?

17 MR. GOMEZ: Objection. Leading.

18 THE COURT: Sustained.

19 Q. What does that refer to, Mr. Kohn, the highlighted
20 sentence?

21 A. I think the genesis of it was the Nunez controversy, but it
22 was worded in such a way here to be more broad than that.
23 There had been other contentions sporadically over the years
24 from Chevron. Some were reported in the press, some reported
25 otherwise, of just general impropriety, general unfairness,

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Kohn - redirect

1 general lack of due process in the Ecuadorian legal system, and
2 this in my view is broad enough to cover those things. Had it
3 gone forward, they would have been pressed on a more specific
4 task list or agenda for Mr. Trujello to follow.

5 Q. In the second half of the same sentence, the draft
6 agreements statements "as well as with respect to allegations
7 leveled by Chevron corporation, the defendant in that
8 litigation, of improper contacts between the Aguinda legal team
9 and various Ecuadorian judge's, court appointed experts or
10 government officials," what did that refer to?

11 A. The same thing I had been discussing. Certainly the court
12 appointed experts, in my view, was the charges that Chevron was
13 making not with the detail that they make now, but some kind of
14 contact, or some kind of influence, or something not right with
15 Cabrera.

16 Q. And who was Mr. Trujello such that you felt he was the
17 appropriate person to conduct such an investigation?

18 A. Well, I felt he was one of the people who could do so. He
19 is a lawyer in Philadelphia. He is a professional colleague
20 and professional friend. We are not close personal friends.
21 He is fluent in Spanish. He was a former prosecutor, either a
22 U.S. attorney, district attorney, or possibly both at different
23 times in his career. He had worked at large firms doing
24 corporate defense litigation, with the Schnader firm in
25 Philadelphia. He understood class action litigation. The

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Kohn - redirect

1 Trujillo Rodriguez firm is a plaintiff class action firm, and
2 he understood that.

3 When I first contacted him about this, he said he is
4 actually doing internal investigation work of various kinds for
5 corporations, including a number of times in South America, and
6 he seemed to be an ideal fit, and he is just a person of skill
7 and integrity.

8 Q. And was it your intention to allow Mr. Trujello to
9 investigate fully what knowledge the members of the legal team
10 prosecuting the Aguinda litigation may have had of
11 improprieties involving the judge and/or the government or
12 ruling parties, and/or the court-appointed experts?

13 MR. GOMEZ: Objection. Leading.

14 THE COURT: Sustained.

15 Q. Mr. Kohn, was it your intention to allow Mr. Trujello to
16 conduct the investigation as he saw fit, or did you plan to
17 limit him in some way?

18 A. I anticipated there would be a process, not simply as he
19 quote saw fit, but that he would discuss with us ahead of time
20 how he would go about such an investigation and what his
21 recommendations would be, and then to proceed.

22 Q. Did you feel there was an investigation that should be
23 undertaken at this point in time, the fall of 2009?

24 A. I felt it was in the best interests of the clients, of the
25 case, and of our law firm separately and indeed of the U.S.

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Kohn - redirect

1 counsel. I thought it was in the best interests of Mr.
2 Donzinger and his firm at that point to get a handle on what
3 was going on, who was saying what to whom, and where these
4 charges were coming from.

5 Q. And did you propose to Mr. Donzinger that Mr. Trujello be
6 hired and proceed with the investigation as is described in the
7 draft retainer, Exhibit 1155?

8 A. Yes, I recommended it. I recommended it in an initial
9 conference call. Mr. Donzinger's initial reaction was
10 favorable, that's a good idea, go ahead. That was before I
11 ever reached out to Mr. Trujello.

12 Then I contacted him, gave him the outline of the
13 situation. Was he interested in talking about it further?
14 Yes, he was. And then we had I recall at least one three-way
15 call, myself, Mr. Donzinger and Mr. Trujello. There may have
16 been more, but I remember at least one.

17 Q. Did Mr. Donzinger subsequently change his mind about
18 agreeing to go forward with this investigation?

19 THE COURT: Sustained in that form.

20 Q. Did the investigation go forward, Mr. Kohn?

21 A. No.

22 Q. Why not?

23 A. Ultimately after a conversation with Mr. Trujello Mr.
24 Donzinger over a period of time had several points or arguments
25 he made as to why he did not think it was a good idea. We had

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Kohn - redirect

1 some back and forth on those in several conversations, and
2 ultimately it reached a point of he would not cooperate with
3 it, the people in the Ecuador legal team would not cooperate
4 with it; if that was something we insisted upon, then maybe we
5 should just withdraw from the case.

6 THE COURT: Is that something he told you?

7 THE WITNESS: Yes, your Honor. It was in a
8 conversation.

9 Q. Did Mr. Donzinger also convey that to you in writing, Mr.
10 Kohn?

11 A. I believe that there are -- there is a short e-mail or
12 letter that conveys some of that, certainly the ultimate
13 conclusion, but in my prior answer was from conversations.

14 MS. NEUMAN: Show the witness Exhibit Plaintiff's
15 Exhibit 1156, already in evidence, please.

16 Q. Is this the writing in which Mr. Donzinger conveyed that
17 neither he or the legal team in Ecuador would cooperate in the
18 Trujillo investigation, Mr. Kohn?

19 A. This is a writing. I recall there may have been another
20 one. My recollection is there was still some further
21 discussions after receiving this. There may have been
22 something else that sort of was an even more finality, if you
23 will.

24 Q. And was the final position that Mr. Donzinger took that he
25 would not cooperate in such an investigation?

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Kohn - redirect

1 A. Yes.

2 Q. Were you able to proceed with such an investigation given
3 that Mr. Donzinger indicated neither he nor the Quito team
4 would cooperate?

5 MR. GOMEZ: Objection. Leading.

6 THE COURT: Sustained. Rephrase.

7 Q. Did you continue to retain Mr. Trujello despite Mr.
8 Donzinger's refusal to cooperate?9 A. No, it never reached the point of a signed agreement with
10 Mr. Trujello. There was the exchange of the draft, discussion
11 of the draft, but this intervened, so we never moved forward.12 Q. And why didn't you retain him after Mr. Donzinger told you
13 he would not cooperate?14 A. Well, I viewed it would, A, be putting Mr. Trujello in a
15 very difficult situation; B, it would probably be a futile
16 exercise. And within, you know, several weeks of this we had
17 withdrawn as counsel. This was a rapid downhill slope at this
18 point in terms of the relationship.19 MS. NEUMAN: Can you please show the witness
20 Plaintiff's Exhibit 1290, please.21 Q. Is this a correspondence that you sent to Mr. Fajardo, Mr.
22 Saenz and Mr. Yanza in April 2010, Mr. Kohn?

23 A. Yes.

24 Q. Were the statements in this letter true and accurate when
25 you sent it?

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Kohn - redirect

1 A. Yes.

2 Q. On page 2 of the letter, I direct your attention to
3 paragraphs 2 and 3. Take a minute to read that, sir.

4 A. Yes.

5 Q. There you are recommending that the facts surrounding
6 Stratus and Cabrera be provided to everyone including the Kohn
7 firm. Did you ever receive all of those facts from Mr.
8 Donzinger?

9 A. No.

10 Q. You are also recommending there again that the Ecuadorians
11 be interviewed by a lawyer on behalf of the plaintiffs. Do you
12 know if those interviews ever took place after you sent your
13 April 13, 2010 correspondence?14 A. Not by anyone we were ever aware of or involved with.
15 Whether -- well, nothing that I know of.16 MS. NEUMAN: I would like to show the witness
17 Plaintiff's Exhibit 1291.

18 Q. Mr. Kohn, have you ever seen Exhibit 1291 before?

19 A. Yes, I believe I have.

20 Q. The metadata indicates that it was drafted by Mr. Donzinger
21 on April 16th of 2010. Did you receive it from Mr. Donzinger
22 in or about April of 2010?

23 A. No.

24 Q. Do you know if you received it -- do you know when you
25 received it?

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Kohn - redirect

1 THE COURT: If ever.

2 A. I did not receive it in the ordinary course. I have seen
3 it as a proposed exhibit or an exhibit in this litigation in
4 preparation for testifying, but I did not receive it at the
5 time.

6 Q. I would like to direct your attention to the paragraph with
7 the heading "The Cabrera Report and the Role of Stratus,
8 Ecuador Law". Can you take a moment to read that paragraph and
9 let me know when you are done, just the first paragraph under
10 that heading.

11 A. OK.

12 Q. While you were counsel for the Ecuador plaintiffs, Mr.
13 Kohn, did Mr. Donzinger ever tell you -- as he sets forth in
14 Exhibit 1291 -- that "e-mails between Stratus and U.S. counsel
15 show U.S. counsel approved of the process whereby Stratus wrote
16 the bulk of the Cabrera report"?

17 A. No.

18 THE COURT: Ms. Neuman, you said something in a
19 preamble to a question a minute ago that I want to go back to.
20 You said the metadata indicates that it was drafted by Mr.
21 Donzinger on April 16, 2010. Is there evidence or a
22 stipulation to that effect, or is there going to be?

23 MS. NEUMAN: It is -- the last page of Exhibit 1291 is
24 the printed metadata. My recollection from Mr. Donzinger's
25 deposition -- though I'm happy to check -- is that he did not

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Kohn - redirect

1 have a contrary recollection of the date, didn't recall when he
2 wrote it versus the metadata.

3 THE COURT: Is this a matter in dispute or not a
4 matter in dispute? Mr. Donzinger? Mr. Friedman?

5 MR. FRIEDMAN: Your Honor, if we could have until
6 tomorrow. I don't think we're going to dispute it, but we need
7 to check one thing first.

8 THE COURT: Mr. Gomez?

9 MR. GOMEZ: Agreed.

10 THE COURT: Agreed what?

11 MR. GOMEZ: We should be given some time, your Honor.

12 THE COURT: All right, counsel. Tomorrow morning.

13 Let's go.

14 MR. GOMEZ: Thank you.

15 Q. Mr. Kohn, are you aware of any e-mails involving any
16 attorney from Kohn Swift & Graf that show that your firm as one
17 of the U.S. firms representing the plaintiffs --

18 Can we put that exhibit back up, please.

19 -- approved of a process whereby Stratus wrote the
20 bulk of the Cabrera report?

21 A. No.

22 Q. While you were still counsel for the Ecuadorian plaintiffs,
23 did Mr. Donzinger ever tell you -- as he sets forth in Exhibit
24 1291 -- that there was also at least one ex parte meeting
25 between Stratus and Cabrera at which U.S. counsel was present?

DB47CHE4

Kohn - redirect

1 A. No.

2 Q. Did anyone from Kohn Swift & Graf attend any ex parte
3 meeting between Stratus and Mr. Cabrera?

4 A. No. No, we did not.

5 Q. Besides Mr. Donzinger's firm and your firm, was anyone else
6 acting as U.S. counsel to the Ecuadorian plaintiffs during the
7 2007-2008 timeframe?

8 A. There may have been some other individual lawyers generally
9 in the nature of interns, legal interns who were working with
10 Mr. Donzinger under his general supervision. I do not believe
11 there were any others other than that.

12 Q. Prior to your withdrawal as counsel for the Ecuadorian
13 plaintiffs, did Mr. Donzinger ever disclose to you that there
14 was "some effort to keep the extent of this ex parte
15 collaboration between our local counsel and the Cabrera from
16 being disclosed"?

17 A. No.

18 Q. Prior to you withdrawing as counsel to the Ecuadorian
19 plaintiffs, did Mr. Donzinger ever tell you that by working so
20 closely with our local counsel and Stratus, Cabrera violated
21 his duties to the court?

22 A. No.

23 Q. Was Mr. Donzinger's failure to convey that information to
24 you at the time it was happening material to you?

25 A. It certainly would have been and is now, yes.

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Kohn - redirect

1 Q. I am going to direct your attention, Mr. Kohn, to
2 Plaintiff's Exhibit 1406.

3 THE COURT: Sorry. Could you just give me the date of
4 1291 again.

5 MS. NEUMAN: April 16, 2010, your Honor.

6 THE COURT: And just to help my thinking, is this
7 before or after the Fajardo affidavit was filed in Denver?

8 MS. NEUMAN: My recollection is it's shortly before,
9 but I want to -- yes.

10 THE COURT: And it's two weeks after the "we'll all go
11 to jail" memo, is that right?

12 MS. NEUMAN: Yes, more or less. And it's three days
13 after prior Kohn letter.

14 THE COURT: All right. Let's go ahead.

15 Q. Mr. Kohn, is Plaintiff's Exhibit 1406 a letter that you
16 sent to Mr. Fajardo and Mr. Yanza, Mr. Humberto Piaguaje, Emel
17 Chavez, Hugo Payaguaje and Emergildo Criollo on August 9th of
18 2010?

19 A. Yes, it is.

20 Q. Were the statements in Exhibit 1406 true and correct when
21 you sent this letter?

22 A. Yes, they are -- or were.

23 Q. This letter is sent prior to the November 2010 first
24 contact you testified that your lawyers had with Chevron's
25 counsel related to this matter, correct?

DB47CHE4

Kohn - redirect

1 A. Yes.

2 Q. And in this letter, I direct your attention to the bottom
3 of the first paragraph where you state that you are shocked by
4 recent disclosures. Take a moment to read that.

5 A. Yes, I see it.

6 Q. The disclosures that you saw -- the statements that you saw
7 in Exhibit 1291 regarding the contact between Mr. Donzinger's
8 U.S. counsel and Stratus and Mr. Cabrera, were any of those the
9 ones that you are referring to here as being contrary to the
10 assurances that you had received from Mr. Donzinger?

11 MR. GOMEZ: Objection. Calls for speculation.

12 THE COURT: It certainly doesn't call for speculation.

13 MR. GOMEZ: Your Honor, he didn't write 1291, and he
14 didn't receive it at the time. He would only be speculating.

15 THE COURT: I suppose if he didn't receive it at the
16 time -- which is my recollection of the testimony -- then he
17 couldn't possibly have been referring to that here. But I
18 imagine we will find out what the witness has to say.

19 Maybe there are things in 1291 that he heard from
20 another source. I don't know. Let's see what the testimony
21 is.

22 A. What I am referring to in the August 9, 2010 letter are
23 facts and information that was coming out of the 12 1782
24 proceeding in Denver regarding Stratus, some of which was
25 coming out at that point could be subsumed within the Donzinger

DB47CHE4

Kohn - redirect

1 April 2010 document. But the April 2010 document goes even
2 further with describing the conduct and the activity beyond
3 what at that point had come out of the 1782. There was some
4 portion of it which was starting to come out of the 1782 but
5 not the entire story as laid out in that other document.

6 Q. The details about the contact with Cabrera that are in
7 Exhibit 1291, are those contrary to what Mr. Donzinger was
8 telling you at the time about the plaintiff team's contact with
9 Mr. Cabrera?

10 MR. GOMEZ: Objection. Leading.

11 THE COURT: Overruled.

12 A. Yes, they are contrary to what he had said to me at a
13 meeting sometime in or about March or April 2010, the meeting I
14 referred to earlier at Mr. Sussman's office in New York, and
15 contrary to things that had been said over the period, you
16 know, years before that as well.

17 Q. I am going to turn your attention to the fourth page of
18 Exhibit 1406, further down the paragraph that begins "When
19 Chevron first started making these allegations..."

20 A. Accusations.

21 Q. "Accusations, Donzinger assured me repeatedly ..."

22 Do you see that one?

23 A. Yes.

24 Q. Can you read the first three sentences of that paragraph to
25 yourself.

DB47CHE4

Kohn - redirect

1 A. OK.

2 Q. And was it accurate in August of 2010, Mr. Kohn, that you
3 had reached the conclusion that Mr. Donzinger had told you
4 blatant lies intended to induce your firm into paying more
5 money for litigation expenses?

6 MR. DONZINGER: Objection, your Honor. The document
7 speaks for itself.

8 THE COURT: Sustained.

9 Q. Why did you reach the conclusion set forth in Exhibit 1406,
10 Mr. Kohn, that Mr. Donzinger had told you blatant lies intended
11 to induce your firm into paying more money for litigation
12 expenses?

13 A. Well, because on a number of separate occasions where the
14 subject of Chevron's first more vague contentions about
15 something improper with Cabrera, later becoming more
16 crystalized were made, and I raised them in a way of saying
17 what are they talking about, what's this about, they were met
18 with there is absolutely nothing to it, they are just making
19 stuff up to try to win the case or smear the whole process.

20 When we had the meeting, as I said, at Mr. Sussman's
21 office, where there was the beginning of some things trickling
22 out of the Denver case, and I said, you know, you need to come
23 clean, I think was the term I used, about what went on with
24 Cabrera and Stratus, it was kind of, well, maybe somebody on
25 the Ecuadorian local group gave some things to Cabrera that are

DB47CHE4

Kohn - redirect

1 not going to look good if it comes out. There was no statement
2 of Stratus wrote the Cabrera report and it's perfectly fine to
3 do that, what are you talking about. You know, it was the
4 opposite of that.

5 And then it also refers to the similar discussion with
6 Mr. Fajardo and Mr. Yanza about April of 2010 as well. And I
7 then reached the conclusion there was a reason why someone had
8 not disclosed the truth, and instead said there was nothing to
9 worry about, everything is fine.

10 The discussion I had with Mr. Donzinger at about the
11 time of our discussions with Mr. Trujello, where he stated in a
12 telephone conversation that he wanted to give me his personal
13 assurance that there was nothing conducted and nothing went
14 wrong in the case that could be embarrassing, he prefaced that
15 by saying he understood that we had a firm with a number of
16 lawyers, and he was one guy in a solo practice, and we had
17 different issues, but he wanted to give us personal assurance
18 that nothing wrong or embarrassing had occurred. That was in
19 September of '09, August or September, in that timeframe. So
20 as this stuff started bleeding out of Denver, despite motions,
21 etc., I think it was a pretty obvious conclusion.

22 MS. NEUMAN: Nothing further, your Honor.

23 THE COURT: Thank you. We will take our break here,
24 about ten minutes.

25 (Recess)

DB47CHE4

Kohn - redirect

1 THE COURT: All right. Let's continue.

2 RECROSS EXAMINATION

3 BY MR. GOMEZ:

4 Q. Mr. Kohn, you didn't need Mr. Donzinger's approval to hire
5 Mr. Trujello, is that correct?

6 A. Yes, to do the purpose of the retention, we absolutely did
7 need his cooperation and agreement.

8 Q. That's not what I asked you, sir. I asked you whether you
9 needed his approval to hire Mr. Trujello.

10 A. The answer is yes. For the purpose for which we were
11 proposing to hire Mr. Trujello, it would have been an utter
12 futile waste of time to do anything else.

13 Q. Was there anything in the retainer agreements that you had
14 with the plaintiffs that required you to get approval from Mr.
15 Donzinger before you could make a decision to hire someone to
16 work on the case?

17 THE COURT: Mr. Gomez, no one's approval for your
18 clients to have a recross examination of this witness is
19 required, but if you as their lawyer refuse to go forward with
20 it, that's pretty dispositive. So, let's not waste anymore
21 time on this point, unless of course I'm misapprehending what
22 your point is, in which case I invite you to enlighten me.

23 MR. GOMEZ: Nothing further, your Honor.

24 THE COURT: Thank you.

25 Mr. Donzinger?

DB47CHE4

Kohn - recross

1 MR. DONZINGER: Nothing further.

2 THE COURT: Thank you.

3 Mr. Kohn, you are excused.

4 THE WITNESS: Thank you, your Honor.

5 THE COURT: Next witness.

6 MR. MASTRO: Your Honor, Chevron calls Dr. Patrick
7 Juola. My colleague Pete Seley will be putting on Dr. Juola.

8 PATRICK JUOLA,

9 called as a witness by the plaintiff,

10 having been duly sworn, testified as follows:

11 DEPUTY COURT CLERK: Thank you. Please be seated. If
12 you can please state your name and spell your last name for the
13 record.

14 THE WITNESS: My name is Patrick Juola. The last name
15 is spelled J, as in Julien, U, as in Uniform, O, as in Oscar,
16 L, as in Lima, A, as in Alpha.

17 MR. SELEY: May I proceed?

18 THE COURT: You may. I am just reminded of a funnily
19 Lily Tomlin bit, but I will share it with counsel on another
20 occasion.

21 DIRECT EXAMINATION

22 BY MR. SELEY:

23 Q. Good afternoon, Dr. Juola.

24 May I approach, your Honor?

25 THE COURT: You may.

DB47CHE4

Juola - direct

1 Q. I marked for identification Plaintiff's Exhibit 3800 and
2 placed it before the witness.

3 Can you take a moment to take a look at that, please.

4 Is Plaintiff's Exhibit 3800 your written direct
5 testimony in this case?

6 A. It is.

7 Q. Please turn to the last page. Is that your signature on
8 the last page?

9 A. It is.

10 Q. At the time you signed your written direct testimony, was
11 it true and accurate?

12 A. It was.

13 Q. As you sit here today, is your written direct testimony
14 true and accurate?

15 A. Yes.

16 MR. SELEY: I offer 3800 into evidence as Dr. Juola's
17 direct testimony.

18 THE COURT: Received on the same basis as others.

19 MR. SELEY: With your permission, I would ask just a
20 few brief questions to clarify something in the witness's
21 written statement.

22 THE COURT: Go ahead.

23 Q. Doctor, I direct your attention to paragraph 25 of your
24 direct testimony on page 8.

25 A. Yes.

DB47CHE4

Juola - direct

1 Q. In particular, in paragraph 25 you refer to an example 1
2 from the June 27, 2011 expert report of Dr. Leonard, which you
3 describe as a block of text with more than 90 identical words
4 appearing in the Fusion memo and in the Ecuadorian judgment.
5 Do you see that?

6 A. I do.

7 MR. SELEY: Your Honor, may I approach, please?

8 THE COURT: Yes.

9 MR. SELEY: Thank you.

10 Q. I place before the witness Plaintiff's Exhibit 2164,
11 already in evidence. Dr. Juola, I direct your attention to
12 Plaintiff's Exhibit 2164, figure 1.

13 A. Yes.

14 Q. Is figure 1 in Plaintiff's Exhibit 2164 the same as the
15 example 1 from Dr. Leonard's report that you described in your
16 direct testimony?

17 A. Yes, it is.

18 Q. Dr. Juola, in paragraph 26 of your direct testimony you
19 refer to an example 2 from the expert report of Dr. Leonard.
20 Do you see that?

21 A. I do.

22 Q. Can I direct your attention to Plaintiff's Exhibit 2164,
23 figure 2, which is on page 2. Do you see that?

24 A. I do.

25 Q. Is figure 2 in Plaintiff's Exhibit 2164 the same as the

DB47CHE4

Juola - direct

1 example from Dr. Leonard's report you describe in your direct
2 testimony?

3 A. Yes, it is.

4 MR. SELEY: No further questions. I pass the witness,
5 your Honor.

6 THE COURT: Thank you. Cross-examination.

7 CROSS EXAMINATION

8 BY MR. BOOTH:

9 Q. Good afternoon. I am Randy Booth. I have a few questions.
10 Can you turn to your expert report, Plaintiff's Exhibit 3800,
11 please. I'm sorry. Your witness statement.

12 A. Yes, sir.

13 Q. Can you turn to -- actually before we get there, let me ask
14 you a couple of things.

15 Has your firm been compensated to date for the work
16 you have done on this case?

17 A. We have received compensation, yes.

18 Q. And how much have you received to date in compensation?

19 A. The firm has received approximately \$800,000. I would need
20 to check the books for the exact figure.

21 Q. And do you have any outstanding bills currently?

22 A. We do.

23 Q. Do you know what your outstanding bills total up to
24 currently?

25 A. Not offhand.

DB47CHE4

Juola - cross

1 Q. Can you tell me when you received your last payment?

2 A. Actually I can't. The person who handles the business
3 aspects of the company is not me.

4 Q. You can't give me even an estimate of what is outstanding,
5 is that right?

6 A. No, I can't.

7 Q. And what do you charge per hour for your time?

8 A. The firm charges \$500 per hour.

9 Q. Is that for all the people working on the project?

10 A. I'm sorry?

11 Q. Each person working on the project would charge at a rate
12 of \$500 an hour?

13 A. Not quite. There are some contract employees who we hired
14 at a reduced rate for some short-term tasks, and we billed out
15 at a reduced rate, I believe, of \$50 an hour, although I don't
16 remember exactly.

17 Q. OK. Now I'm going to turn to your witness statement. Can
18 you turn to paragraph 7, page 3, please. I want to ask you a
19 few questions about your specialty, your experience, your
20 training, that type of thing.

21 At the end of paragraph 7 it makes reference to
22 computational and forensic analysis of linguistic features.
23 Can you explain to the court what that is.

24 A. Basically nobody speaks or writes identically to anyone
25 else. For example, if you told me that you had parked your

DB47CHE4

Juola - cross

1 lorry on the pavement, that wouldn't indicate to me that you
2 were probably not from around here. Around here we park trucks
3 on sidewalks.

4 Q. And when you talk about computational, is that a particular
5 type of analysis that you do?

6 A. It is. It means doing the analysis by a computer instead
7 of by hand with a highlighter, for example.

8 Q. And the next sentence you indicate you specialize in the
9 area of authorship attribution. First of all, what is
10 authorship attribution?

11 A. Authorship attribution is the determining of an author of
12 an unknown or questioned document.

13 Q. And when you say specialize, is there a recognized
14 specialty or subspecialty in your field dealing with authorship
15 identification?

16 A. I'm not sure what you mean by a recognized specialty.

17 There is no official organization of authorship.

18 Q. Then I should ask you, what do you mean by the term
19 specialize as you use it there in that sentence?

20 A. Most of my publications have been in the area of authorship
21 attribution. Most of my conference presentations have been in
22 the area of authorship attribution. I run conferences focused
23 on the attribution of authorship.

24 Q. OK. Can you go down to paragraph 11, still on page 3. It
25 indicates the types of projects that your firm handles. Can

DB47CHE4

Juola - cross

1 you tell us which, if any, of those types of projects in that
2 last sentence of paragraph 11 you did in this particular case.

3 A. This case is primarily a case about plagiarism and large
4 scale document searching.

5 Q. Paragraph 12 talks about it appears to be -- well, you will
6 tell me. What is paragraph 12 discussing? What type of system
7 is that?

8 A. It's discussing a computer program that I and my staff had
9 written over the past more than a decade.

10 Q. This is something you developed yourself?

11 A. Along with others, yes.

12 Q. And it says it's an authorship analysis system. Is this
13 the system you use in your work as an authorship analysis
14 expert?

15 A. One of the systems I use.

16 Q. Did you use this system in this case at all?

17 A. I did not.

18 Q. Are you fluent in Spanish?

19 A. I am not.

20 Q. Are you comfortable rendering expert opinions in a case
21 that involves documents written in Spanish?

22 A. I am. Partly because one of my staff is fluent in Spanish
23 and partly because the computational approach does not hinge on
24 any particular understanding of the language. It hinges
25 instead on textual properties that are language independent,

DB47CHE4

Juola - cross

1 such as whether the same string appears in multiple locations.

2 Q. Looking at paragraph 11, again the last sentence, the
3 projects your firm handles, are there any projects in that list
4 that you are unable to handle if the documents are in Spanish?

5 A. One moment, please.

6 Q. Page 3, paragraph 11, the last sentence.

7 A. Some of the profiling of authorship characteristics we
8 would be unable to do because we do not have the training
9 documents. For example, in English we can infer personality
10 from a person's writing, but we don't have the training data to
11 do the same thing for Spanish.

12 Q. Other than that, everything else you could do if the
13 documents were in Spanish, is that fair?

14 A. That is fair.

15 Q. Can you tell us briefly, what -- you make reference to OCR.
16 Can you just briefly describe what OCR stands for or refers to?

17 A. OCR stands for optical character recognition. It's the
18 process of taking an image which is -- if you think about how a
19 newspaper photo is constructed it's essentially a collection of
20 black dots or white dots, and from that black or white dots,
21 extracting the text, the characters that would actually
22 comprise the language inside that document.

23 Q. And did you also have people at your behest go through
24 parts of the Ecuadorian record by hand?

25 A. I did.

1 DB47CHE4

2 Juola - cross

3 Q. Did you go through the Ecuadorian record yourself to look
4 at documents by hand?

5 A. I did.

6 (Continued on next page)

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DB48CHE5

Juola - cross

1 Q. The documents you looked at, were they translated for you
2 into English or did you look at them in Spanish?

3 That's a bad question. The documents from the
4 Ecuadorian records you looked at by hand, were they translated
5 into English or did you look at them in Spanish?

6 MR. SELEY: Objection to form.

7 THE COURT: What is your objection?

8 MR. SELEY: The assumption that the documents are all
9 text.

10 THE COURT: Sustained.

11 Q. Are there some documents that are text and some documents
12 that are not text?

13 A. Yes. For example, some of the documents were photographs.

14 Q. The documents that had text, that you looked at by hand as
15 opposed to with a computer, were those documents translated
16 into English or did you look at them in Spanish?

17 MR. SELEY: Objection to form.

18 Q. The documents that were text that you looked at by hand,
19 were those documents translated into English or did you look at
20 them in Spanish?

21 A. I looked at the documents as they occurred in the court
22 record in Ecuador. Some of the documents were in English.
23 Some of the documents were in Spanish. Some of the documents
24 were entered into the court record as translations of English
25 documents.

DB48CHE5

Juola - cross

1 Q. Did you select the documents that you looked at?

2 A. I, personally?

3 Q. Yes.

4 A. The computer did.

5 Q. In terms of sort of the body of documents that you were
6 asked to look at, did you select that or were those documents
7 selected for you?

8 Bad question. The documents that you ran the OCR
9 program on, were those documents selected for you or did you
10 select those documents?

11 A. I think you have a -- you're laboring under a
12 misapprehension, sir.

13 Q. Did you run the OCR program on the entire Ecuadorian
14 record?

15 A. No. I didn't run the OCR program at all. The OCR was done
16 by someone else.

17 Q. Did that person do the OCR program on the entire Ecuadorian
18 record?

19 A. I believe so.

20 Q. Now, if you look at paragraph 13 on page 4 under
21 methodology, you refer to the findings of other experts in this
22 case. Other than Dr. Leonard, did you look at any other expert
23 reports or statements in this case?

24 A. I did.

25 Q. What experts were those?

DB48CHE5

Juola - cross

1 A. One of them was a report by, I think his first name was
2 Michael Younger of Stroz Friedberg. I understand he has since
3 been replaced as a testifying expert by Mr. Lynch.

4 I also received and reviewed a report by a Maite
5 Turrel, who has since passed away and is therefore unavailable
6 for testimony.

7 Q. What was that name, the last name?

8 A. Turrel, T-U-R-R-E-L. The first name is spelled M-A-I-T-E.

9 MR. BOOTH: Those are my questions. Thank you.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q. Good afternoon, Mr. Juola.

13 A. Good afternoon.

14 Q. Excuse me, doctor.

15 Doctor, how many people assisted you with your
16 analysis?

17 A. In total?

18 Q. Yes.

19 A. Five, aside from myself.

20 Q. Sir, did you perform an authorship analysis on the February
21 14, 2012 judgment to determine if it was in fact drafted by
22 Judge Nicolas Zambrano?

23 A. That was not part of my agreement.

24 MR. GOMEZ: Nothing further.

25 THE COURT: Anything else, Mr. Seley.

DB48CHE5

Juola - cross

1 MR. SELEY: No questions.

2 THE COURT: Dr. Juola, you are excused.

3 (Witness excused)

4 MR. MASTRO: Chevron calls Mr. Samuel Hernandez.

5 SAMUEL HERNANDEZ, JR.,

6 called as a witness by the plaintiff,

7 having been duly sworn, testified as follows:

8 THE DEPUTY CLERK: State your name and spell your last
9 name for the record.10 THE WITNESS: My name is Samuel Hernandez, Jr.,
11 S-A-M-U-E-L, H-E-R-N-A-N-D-E-Z, J-R.

12 DIRECT EXAMINATION

13 BY MR. SELEY:

14 Q. Good afternoon, Mr. Hernandez.

15 A. Good afternoon.

16 MR. SELEY: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 Q. I have marked for identification Plaintiff's Exhibit 3900.
19 Mr. Hernandez, would you take a moment and look at that?20 Is Plaintiff's Exhibit 3900 your written direct
21 testimony in this case?

22 A. Yes.

23 Q. Would you please turn to page 15. Is that your signature,
24 sir?

25 A. Yes, it is.

1 DB48CHE5

Hernandez - direct

2 Q. Since signing this document on October 8, you made a change
3 to this document, is that correct?

4 A. Yes, that's correct.

5 Q. Can you turn to page 9, paragraph 22B?

6 Is that the change you made, sir?

7 A. Yes, it is.

8 Q. Why did you make that change?

9 A. Because there was a typo. There were three selections of
text with two versions, not three versions.

10 Q. Other than that correction, at the time you signed your
11 witness statement on October 8, was it true and accurate?

12 A. Yes.

13 Q. With that correction, is everything in your witness
14 statement true and accurate as of today?

15 A. Yes, it is.

16 MR. SELEY: I would offer Plaintiff's Exhibit 3900 in
17 evidence as Mr. Hernandez's direct testimony.

18 THE COURT: Received on the same basis as the others.

19 (Plaintiff's Exhibit 3900 received in evidence)

20 MR. SELEY: Pass the witness, your Honor.

21 THE COURT: Mr. Booth.

22 CROSS-EXAMINATION

23 BY MR. BOOTH:

24 Q. Good afternoon. I am Rainey Booth. Nice to meet you.

25 First of all, has your firm charged for your work done

1 DB48CHE5

Hernandez - cross

1 to date in this case?

2 A. Yes, it has.

3 Q. How much have you charged to date or your firm charged to
4 date?

5 A. My firm has charged approximately a total of about
6 \$400,000.

7 Q. Have you received that entire amount in payment to date,
8 the 400,000?

9 A. I can't confirm that, if my company has received that
10 money.

11 Q. You believe \$400,000 is the total charges up to today, is
12 that fair?

13 A. Could you repeat the question?

14 Q. \$400,000 you believe would be the total charges by your
15 firm for this case up to today?

16 A. That is correct.

17 Q. What is your hourly rate for working in this case?

18 A. Well, the hourly rate that I bill on behalf of my company
19 is \$350.

20 Q. How many people from your company worked on this project in
21 this case?

22 A. There were a total of four of us.

23 Q. If you look at your witness statement, which is Plaintiff's
24 Exhibit 3900, do you have that in front of you, would you go to
25 paragraph 8 on page 3.

DB48CHE5

Hernandez - cross

1 The second sentence, it discusses how the company
2 Morningside, and that's the company you work for, is that
3 right?

4 A. I'm sorry. Can you clarify what paragraph we are on?

5 Q. Paragraph 8, second sentence.

6 Do you see it, paragraph 8 on page 3?

7 A. Yes.

8 Q. Morningside is the company you work for, is that correct?

9 A. That's correct.

10 Q. It indicates that Chevron provided Morningside with two
11 sets of documents. Did you or anyone else at Morningside, to
12 your knowledge, play any role in the selection of those
13 documents?

14 A. No.

15 Q. Did you personally review the entire Ecuadorian trial
16 record, you personally?

17 A. No, I personally did not.

18 Q. Did your firm review the entire Ecuadorian trial record?

19 A. No. What we reviewed was known as the reviewed record. It
20 included all of the documents that had been filed by the Lago
21 Agrio plaintiffs and the parties through the first date of the
22 filing through the judgment for the first review, and it
23 included all of the documents that had been filed by Chevron
24 and Texaco. This was after May 28, 2010, which was the first
25 day in which they had received documents from the Lago Agrio

1 DB48CHE5

Hernandez - cross

1 plaintiffs.

2 Q. Paragraph 12 of your witness statement, there is a
3 reference to 236,000 individual pages.

4 A. Yes.

5 Q. Did your firm review that entire 236,000 number of
6 individual pages from the Ecuadorian record?

7 MR. SELEY: Your Honor, asked and answered.

8 THE COURT: I thought so.

9 Go ahead and answer it.

10 A. We did not. Again, we reviewed a reviewed record or a
11 portion of that, which included the documents that I just
12 mentioned.

13 Q. I apologize. So it would be your understanding that the
14 236,000 individual pages would be the entire Ecuadorian record,
15 is that your understanding?

16 A. Yes, it is.

17 Q. If we go to paragraph 13 then, there is a discussion about
18 97,058 individual pages. Do you see that?

19 A. Yes, I do.

20 Q. Is that the reviewed record that your firm worked with in
21 doing your analysis in this case?

22 A. That was the reviewed record for the first review, yes.

23 Q. Do you know how many pages of the Ecuadorian record you
24 personally reviewed? Did you keep track of that in any way?

25 A. I did not personally review that record.

DB48CHE5

Hernandez - cross

1 Q. Did you keep track in any way of how many pages any
2 individual at your firm reviewed of the Ecuadorian record?

3 A. We kept track of all of the documents that we reviewed from
4 the reviewed record, yes.

5 Q. Did you keep track in any way of how long it took you to
6 review a certain number of pages, anything like that, where you
7 kept track of the time per page or how many pages you reviewed
8 in an hour, did you make any assessment like that in this case?

9 MR. SELEY: Object to form, your Honor.

10 THE COURT: Overruled.

11 A. Would you please repeat the question?

12 Q. Did you or any member of your firm, to your knowledge, keep
13 track of how long it took you to review the Ecuadorian record
14 per page or how many pages you were able to review in an hour,
15 any kind of record of that effort?

16 A. We did not.

17 MR. BOOTH: No more questions, your Honor.

18 THE COURT: Mr. Gomez.

19 MR. GOMEZ: Nothing further, your Honor.

20 THE COURT: You're excused, sir. Unless there is a
21 redirect.

22 MR. SELEY: No, your Honor.

23 THE COURT: You're excused, sir. Thank you.

24 (Witness excused)

25 THE COURT: Next witness.

DB48CHE5

Hernandez - cross

1 MR. MASTRO: Chevron calls Sandra Elena.

2 MR. BOOTH: Before we go too far, we had filed a
3 motion regarding this witness. I don't know if the Court
4 received it or has seen it.

5 THE COURT: You filed it sometime in the wee hours of
6 the morning, isn't that right?

7 MR. BOOTH: Someone on my behalf. I just wanted to
8 make sure the Court had seen it and call it to your attention
9 before the witness testifies.

10 THE COURT: I am aware that it's there.

11 MR. BOOTH: So I don't waive anything, would the Court
12 want me to briefly express our motion orally so you have a
13 chance to rule on it or you will rule on the papers?

14 THE COURT: I will rule on the papers. I am going to
15 take the testimony. I am aware that, in substance, your motion
16 was an in limine motion to preclude the witness, and I think
17 the time for filing that was a couple of months ago, but it may
18 still be available to you, and I will decide in due course.

19 MR. BOOTH: Thank you.

20 MR. MASTRO: Thank you, your Honor.

21 SANDRA ELENA,

22 called as a witness by the plaintiff,

23 having been duly sworn, testified as follows:

24 THE DEPUTY CLERK: State your name and spell your last
25 name for the record.

DB48CHE5

Hernandez - cross

1 THE WITNESS: Sandra Elena, S-A-N-D-R-A, last name
2 E-L-E-N-A.

3 THE COURT: You may proceed, Mr. Mastro.

4 MR. MASTRO: May I approach the witness?

5 THE COURT: You may.

6 Proceed.

7 DIRECT EXAMINATION

8 BY MR. MASTRO:

9 Q. Ms. Elena, I have handed you what has been marked as
10 Plaintiff's 4700. Is that your declaration?

11 A. Yes, it is.

12 Q. Can I ask you to please turn to page 41? Do you see the
13 signature there?

14 A. Yes.

15 Q. Is that your signature, Ms. Elena?

16 A. Yes, it is.

17 Q. Was this declaration true and correct at the time you
18 executed it on October 18, 2013?

19 A. Yes.

20 Q. Is it true and correct today?

21 A. Yes.

22 Q. Is this your direct testimony in this case reflected in
23 this declaration?

24 A. Yes, it is.

25 MR. MASTRO: Your Honor, I offer Plaintiff's Exhibit

DB48CHE5

Elena - direct

1 4700.

2 THE COURT: Received on the same basis as before.

3 (Plaintiff's Exhibit 4700 received in evidence)

4 MR. MASTRO: I turn over the witness.

5 THE COURT: Mr. Booth.

6 MR. BOOTH: I have some books. May I approach?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. BOOTH:

10 Q. Good afternoon. Is it Ms. Elena or Dr. Elena?

11 A. Ms. is fine.

12 Q. I am Rainey Booth. Nice to meet you.

13 A. Nice to meet you.

14 Q. I want to first ask you, have you received payment for your
15 work in this case to date, have you received any payments?

16 A. Yes, I did.

17 Q. How much have you been paid so far up to this point in time
18 for your work in this case?

19 A. I received approximately \$55,000 so far.

20 Q. Do you have any outstanding bills that have not yet been
21 paid in this case?

22 A. Yes, I do.

23 Q. Can you tell me how much is outstanding currently in terms
24 of bills?

25 A. I can calculate, probably is still \$40,000.

DB48CHE5

Elena - cross

1 Q. An additional 40,000, is that right?

2 A. Yes.

3 Q. What is your hourly rate for your work in this case?

4 A. It is \$300.

5 Q. Now, I have given you a notebook. Would you mind opening
6 that and turning to tab 2?

7 Let me ask you, for the purpose of forming your
8 opinions in this case, did you review any affidavits filed on
9 behalf of Texaco in the New York *Aquinda v. Texaco* case?

10 They would be those affidavits behind tab 2. Can you
11 just look at those and tell me if you have reviewed or relied
12 on any of those in forming your opinions in this case?

13 A. No.

14 THE COURT: These are defendants' exhibits?

15 MR. BOOTH: These are Defendants' Exhibits DX 0362 is
16 the first one, DX 0363, DX 0364, DX 0365, DX 0366, DX 0367, DX
17 0368, DX 0369, and DX 0382.

18 We would move these into evidence.

19 THE COURT: Mr. Mastro.

20 MR. MASTRO: We would want to review them first before
21 we agree to move them into evidence.

22 THE COURT: All right.

23 MR. MASTRO: And this witness has said she hasn't seen
24 them.

25 THE COURT: We will deal with that tomorrow, or at

1 DB48CHE5

Elena - cross

1 some other appropriate time.

2 MR. MASTRO: Thank you, your Honor.

3 BY MR. BOOTH:

4 Q. Ms. Elena, did you consider any information in forming your
5 opinions from the case, it was a case filed in New York, the
6 *Aquinda v. Texaco* case, did you look at any information from
7 that particular case in forming your opinions here?

8 A. No.

9 Q. OK. If you will turn in your written statement to page 27
10 of your witness statement. That would be again DX 4700.

11 Specifically, looking at the section that begins,
12 paragraph 67, the title "Judicial Corruption in Ecuador." Are
13 you there?

14 A. No. Please, can you tell me the page again?

15 Q. Page 27. I assume the version that you have is the same as
16 the version I have. On mine it's page 27. At the very bottom
17 of that page is paragraph 67. Is that what you have as well?

18 A. Yes.

19 Q. So beginning with this section, which deals with judicial
20 corruption in Ecuador, and I want to go forward just a minute
21 and ask you a few questions about that section of your witness
22 statement. All right?

23 In this case, do you have personal knowledge of any of
24 the facts of this specific case, of what is alleged or claimed
25 to have actually happened in this case?

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Elena - cross

MR. MASTRO: Objection. Vagueness, your Honor. What does he mean by "this case"?

THE COURT: Overruled.

A. I did not analyze any of the facts of this case.

Q. And you were not asked to make any assumptions about the particular facts of this case we are here about, correct?

A. I did not make any assumption on this case.

Q. You discuss on page 28, paragraph 70, some of the indices you used in forming your opinion about corruption, and you discuss these indices as being indirect. Can you explain to the Court what you mean by the indices you used being indirect?

A. Corruption is clandestine and is performed in secret. So you won't find direct measures of corruption that you can use to assess actual corruption in a country. So in the academic field, corruption experts use indices that show the corruption in a country, and I am saying that there is a process, there are good measures to understand corruption, but they are not direct cases of corruption.

Q. In your field, in your academic field of looking at this issue, the types of indices that you refer to in your witness statement, are these the types of indices you use in your academic work as well?

A. Yes.

Q. You consider these indices to be good and reliable indices to look at this issue of corruption?

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Elena - cross

1 A. Yes.

2 Q. If you turn to page 30 of your witness statement, beginning
3 in paragraph 75, can you explain to the Court what the global
4 corruption barometer is?

5 A. The global corruption barometer is an index that measures
6 corruption. It's developed by a very well-known international
7 organization called Transparency International, which is the
8 leading organization combating corruption around the world, and
9 it produces an index to assess corruption, and one portion of
10 the index is the perception of corruption in legal system and
11 judiciary.

12 Q. If you turn to page 31 of your report, page 76, do you see
13 that you refer to three years of this global corruption
14 barometer, 2004, 2005 and 2007? Do you see that?

15 A. Yes.

16 Q. If you turn to tab 3 of the binder I have handed you, can
17 you look at the document behind tab 3, which is DX 1208, and
18 tell me if that is the global corruption barometer from the
19 year 2004 that you refer to in your report?

20 A. Yes.

21 MR. BOOTH: We would move in Exhibit 1208 into
22 evidence.

23 MR. MASTRO: No objection.

24 THE COURT: Received.

25 (Defendants' Exhibit 1208 received in evidence)

DB48CHE5

Elena - cross

1 Q. Ms. Elena, can you turn to tab 4 of the binder I handed you
2 and tell me whether that document, which is DX 1209, is the
3 2005 report that you reference in paragraph 76 of your report?

4 THE COURT: I take it you're going to do the same
5 thing with the next two exhibits?

6 MR. BOOTH: The next one after this one.

7 THE COURT: Can we stipulate that 1209 and 1210 are
8 the comparable reports of 2005 and 2007, and that they are
9 going to be received, Mr. Mastro?

10 MR. MASTRO: I have no objection.

11 THE COURT: Mr. Gomez?

12 MR. GOMEZ: No objection.

13 THE COURT: They are received, Defendants' 1209 and
14 1210.

15 (Defendants' Exhibits 1209 and 1210 received in
16 evidence)

17 Q. Ms. Elena, can you turn to tab 5 of the binder? I want to
18 ask you specifically about the 2007 report. That is the report
19 you reference specifically in paragraph 76 of your witness
20 statement, is that right?

21 THE COURT: It's one of them.

22 MR. BOOTH: That was a bad question.

23 Q. That's the report you specifically give us a number, a
24 corruption number, a score for, correct?

25 THE COURT: Yes. That's what the document says, Mr.

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Elena - cross

1 Booth. Can we move?

2 MR. BOOTH: Thank you, your Honor.

3 Q. Can you turn to page 23 of Defendants' Exhibit 1210, which
4 is the 2007 global barometer?

5 Can you verify that's the chart you took your number
6 from, the 4.1 number for Ecuador?

7 THE COURT: The numbers match.

8 Next question.

9 Q. Can you turn to page 25 of that same document, and let me
10 ask you, it's table 4.4. On the document it's labeled as page
11 24. On the exhibit number it should be 25. I know it's
12 confusing. It would be table 4.4. Do you see that?

13 A. On page 24, you mean the table on page 24?

14 Q. Table 4.4.

15 A. Yes.

16 Q. Is this a table you relied on in forming opinions in this
17 case? The title of the table being "Respondents' Evaluation of
18 their Government's Efforts to Fight Corruption."

19 A. No.

20 Q. Ms. Elena, can you turn to tab 6 of the binder that I gave
21 you? Ignore the first page. That's a chart that I made.

22 If you would turn to the second page and tell me if
23 these documents are from the same organization you mentioned
24 earlier, Transparency International. This would be DX 1211.

25 THE COURT: Are you asking any more than whether these

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Elena - cross

1 pages have the name of that organization on it?

2 MR. BOOTH: I just want to make sure it is the same
3 organization and not one with a similar name. I have a good
4 faith belief they are the same organization. I want to move
5 into evidence Defendants' Exhibit 1211.

6 THE COURT: Any objection?

7 MR. MASTRO: I have not seen these before. If the
8 witness is familiar with these, that's one thing, but I am not
9 in a position to stipulate to them coming into evidence right
10 now.

11 THE COURT: All right.

12 Q. Ms. Elena, do you recognize these documents as coming from
13 the same organization you referenced earlier as being one of
14 the leading agencies fighting corruption, Transparency
15 International?

16 A. The only thing that I can recognize is the logo of the
17 organization, it says Transparency International, but I can't
18 affirm that this table was retrieved from the database.

19 Q. You did not consider these materials in forming your
20 opinion in this case? For the record, this is Transparency
21 International archive site and it deals with corruption
22 perceptions index.

23 THE COURT: Is that all part of the question?

24 MR. BOOTH: Sorry, your Honor. I will ask another
25 question.

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Elena - cross

1 Q. Identifying this document DX 1211, Transparency
2 International archive site, would you agree with me that it
3 references corruption perceptions index for various years?

4 THE COURT: It purports to do that. Is the objective
5 to get this into evidence?

6 MR. BOOTH: Yes.

7 THE COURT: Maybe you want to ask questions that might
8 get you there.

9 Q. Do you recognize any of this data or these charts as being
10 from Transparency International, the archive site dealing with
11 corruption?

12 A. As I said, I recognize the logo up front in the page. To
13 agree to affirm that this is the correct data, I have to
14 confront these to the web page.

15 Q. Would you turn to tab 7, DX 1219, which for the record it's
16 corruption perceptions index 2011.

17 Do you recognize that document as also coming from
18 Transparency International?

19 THE COURT: Are you asking whether that name appears
20 on it or are you asking whether she really knows anything about
21 it?

22 MR. BOOTH: I asked if she recognized that as coming
23 from Transparency International; not whether she just sees it
24 on the page, but actually if she recognizes it as coming from
25 that organization was my question.

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Elena - cross

1 THE COURT: All right.

2 Do you know, Ms. Elena?

3 A. Which one are you asking me, which page?

4 Q. Behind tab 7 of the binder, DX 1219, the title being
5 corruption perceptions index 2011.

6 A. This map doesn't have the source.

7 Q. The first page should be --

8 THE COURT: Ms. Elena, apart from reading the name on
9 here, if there is a name, I don't even see it, but apart from
10 reading any name that's on here, do you know anything about
11 this document at all?

12 THE WITNESS: I know that Transparency International
13 uses a corruption index every year. I know that for sure.

14 THE COURT: Do you know whether this is the index they
15 issued in 2011, this particular group of pages?

16 THE WITNESS: It seems like it is. It's similar, but
17 I cannot affirm that it is because I haven't compared these
18 pages to the web page.

19 THE COURT: OK. Thank you.

20 Mr. Booth.

21 Did you rely on this document in reaching any of your
22 conclusions, Ms. Elena?

23 THE WITNESS: Actually, I used the corruption
24 barometer, but, specifically, the question related to the legal
25 system and the judiciary because it's more narrowed down and

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Elena - cross

1 specific to my work.

2 THE COURT: But I am asking you about this particular
3 document, the one marked Defendants' Exhibit DX 1219. Have you
4 ever seen it before today?

5 THE WITNESS: Yes.

6 THE COURT: All right. Did you rely on this document
7 in forming your opinions in this matter?

8 THE WITNESS: No.

9 THE COURT: Mr. Booth, I know what you're trying to
10 do, and it may be that you can do it, but it sounds to me like
11 you can't do it with this witness. And I have a feeling if you
12 and Mr. Mastro had a conversation, you might get somewhere, but
13 let's not take all this time if we can avoid it.

14 BY MR. BOOTH:

15 Q. Ms. Elena, did you take any steps in forming your opinions
16 to compare the period of time 2001 and earlier in Ecuador, in
17 terms of corruption, with the period of time after 2008 in
18 Ecuador, in terms of corruption, did you take any steps to do
19 that?

20 A. No.

21 Q. Can you turn to page 33, paragraph 81 of your report, your
22 witness statement?

23 There is reference made to the opacity index. Can you
24 tell the Court what the opacity index is, please?

25 A. The opacity index is an index produced by the Milken

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Elena - cross

1 Institute, which is a recognized institute producing this kind
2 of studies, and it shows how opaque a legal and judicial
3 environment is, and I used this index because opacity is the
4 opposite to transparency and it is the lack of clear and
5 neutral rules. And as I said, for analyzing corruption, you
6 need to understand also the environment, and I thought that
7 this was a useful index to include in my report.

8 Q. Was this index an important index in the opinions you
9 formed in this case?

10 A. Yes, as the other 16 indexes.

11 Q. At the end of paragraph 82, you indicate it's based
12 entirely on empirical observations. What do you mean by that?

13 A. This index includes hard data, that is data that comes from
14 empirical observation as opposed to perception. It derives
15 from the concrete observation of the laws, for example, of
16 actually how the laws are implemented and issues related to
17 transparency in a country.

18 Q. If you look at paragraph 84 on page 34, you make reference
19 to a score from the year 2009, and the score is 57.

20 A. Yes.

21 Q. If you turn to tab 8 in the binder that I gave you, can you
22 confirm for me that DX 1212 is the document, the 2009 opacity
23 index, can you confirm that's the document you relied on to get
24 that score of 57?

25 A. Yes.

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Elena - cross

1 Q. On page 6 of the document, if you look at page 6 and
2 confirm that's where you got the number from?

3 THE COURT: The numbers match.

4 MR. BOOTH: I apologize. Let's move on.

5 Q. Ms. Elena, did you look at any other reports from this
6 agency looking at the opacity index for Ecuador for any other
7 years?

8 A. If I can confirm with my March report I can tell you,
9 because I included in the exhibits of my previous report all
10 the historical series of the data I collected just for the
11 purpose of disclosure.

12 MR. MASTRO: I have the report.

13 May I approach the witness?

14 THE COURT: You may.

15 Q. I will tell you what. We may not need to do that. I can
16 ask the next question. If you need to do it, you certainly
17 can, but let me ask the next question.

18 Can you turn to tab 9 of the binder I gave you,
19 please? And tell me if DX 1213 is the opacity index from
20 January of 2001?

21 A. Yes.

22 Q. This is the same organization, correct?

23 A. No.

24 Q. This is a different organization than the opacity index of
25 2009?

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Elena - cross

1 A. Yes.

2 Q. How are these organizations different?

3 That's a bad question. They both are opacity indexes,
4 is that right?

5 A. It is called opacity index.

6 Q. Yes.

7 A. It is not the same index that I was looking at.

8 Q. Did you review this Price Waterhouse opacity index from
9 January 2001 in forming your opinions?

10 A. No.

11 Q. Do you consider Price Waterhouse Coopers, the opacity index
12 here, to be a reliable source?13 THE COURT: Of what, audited financial statements,
14 opacity indices?15 Q. Do you consider this document, Defendants' Exhibit 1213, to
16 be a reliable source of opacity indices for countries like
17 Ecuador?18 A. I know this index is not as good as the opacity index from
19 the Milken Institute. It has a totally different methodology.
20 And on top of that, it is not from the time period of the
21 analysis I conducted, which is from 2003 to 2013.22 Q. I didn't understand the answer. Do you consider this
23 document, this Price Waterhouse Coopers opacity index, to a
24 reliable source in terms of an opacity index?

25 MR. MASTRO: Objection. Asked and answered.

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Elena - cross

1 THE COURT: Sustained.

2 Q. Ms. Elena, who picked the time frame that you were looking
3 at in this case? Did you pick it or did someone else pick it?

4 A. I was hired to conduct a study within the time frame of
5 2003 and 2013.

6 Q. So you were told which time frame to look at, is that
7 correct?

8 A. Yes.

9 Q. And you were asked not to look at any documents related to
10 your opinions prior to 2003, is that correct?

11 A. No.

12 Q. Did you look at any documents prior to 2003 in forming your
13 opinion?

14 A. Yes. For example, the length of ten year indicator.

15 Q. Look at your witness statement, page 36. You have a chart.
16 It's entitled, "Lack of Confidence in the Judiciary in
17 Ecuador." Do you see it?

18 A. Yes.

19 Q. Now, this is something that you did by looking at a Web
20 site, correct?

21 That's a bad question. The data that is represented
22 in this chart you obtained by looking at a Web site for a group
23 called Latinobarometro, correct?

24 A. Yes.

25 Q. It's an interactive Web site that you can use to get

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Elena - cross

1 exactly the years and the country that you want to look at,
2 correct?

3 A. Yes.

4 Q. If you turn to tab 10 in the binder I gave you, can you
5 confirm that Defendants' Exhibit 1214 is from that Web site,
6 Latinobarometro Web site? Is it?

7 A. Again, I can't confirm that. You have the logo up front
8 and it seems to be, but to affirm that it is, I will have to
9 check and compare it to the Web site.

10 Q. You actually used the Web site to do this graph, correct?

11 A. I retrieved almost all the data of my report from Web
12 sites.

13 Q. And you're telling me you don't recognize the sheet here as
14 the introductory page where you put in the name of the country
15 and then select the years that you want to retrieve data on,
16 the first page?

17 A. As I said, it seems to be the page, but for being sure that
18 this is a picture of the Web site, I would like to compare to
19 the Web site.

20 Q. Do you consider Latinobarometro to be a good and reliable
21 source of information on the topics that you're discussing in
22 your report?

23 A. Yes.

24 Q. If in fact these documents in DX 1214 are from that Web
25 site, you would consider them to be good and reliable documents

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Elena - cross

1 on the topics they discuss, correct?

2 A. Assuming they are from Latinobarometro, yes.

3 Q. Assuming they are from the Latinobarometro Web site, you
4 would have no concerns about relying on these documents for the
5 information they contain, correct?

6 MR. MASTRO: Objection. Asked and answered.

7 THE COURT: It would depend on the information, don't
8 you think, Mr. Booth?

9 MR. BOOTH: Bad question. I think it's fine, but let
10 me just be sure.

11 Q. As we go through each page, I am going to ask you some
12 things about the information.

13 I want you to assume for me that what I am going to
14 show you is actually from the Web site, all right, as I ask you
15 some questions about it.

16 If you recall, when you go to the Web site, on one of
17 the early pages, you can select the country and then you can
18 select the years that you want data on, correct?

19 A. Yes.

20 Q. And you chose for your report to select two groups of
21 years. You selected 1996 to 2001 as one group, correct?

22 A. No.

23 Q. How did you do it then? How did you retrieve information
24 off this Web site for your graph on page 36?

25 A. I retrieved the information for all the years that are

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Elena - cross

1 available the same way I did for every index I used.

2 Q. Right. Then did you yourself then group the years into
3 these two sections, 1996 to 2001 and 2002 to 2010?

4 A. Yes.

5 Q. You made the decision to group the years in that way, is
6 that right?

7 A. Yes.

8 Q. And you chose to display it that way in your witness
9 statement, correct?

10 A. Yes.

11 Q. Was there any reason for drawing the separation between
12 2001 and 2002 of the two groups you identified here in your
13 witness statement?

14 A. Because it struck me that the data was going up. So this
15 is why I include this chart.

16 Q. Did it have anything to do with the date that the original
17 New York case, *Aquinda v. Texaco*, was dismissed on forum
18 grounds in 2001, did that play any part in your decision?

19 A. No.

20 Q. Did any one of Chevron's attorneys indicate that would be
21 the right date separation for you to use in your opinion?

22 A. No.

23 Q. So you have an awareness then of how each individual year
24 looked if we just took it year by year, correct?

25 A. Well, I don't know that from the top of my head, but I have

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Elena - cross

1 the data in my report.

2 Q. If you turn to page 4 of tab 10 in the book I have given
3 you, can you look and see if the date we compiled, beginning
4 the year 1996 through the year 2010, if that looks to be right
5 to you?

6 A. I need to check this chart with my data.

7 Q. If you want to check the backup data, it's in the pages
8 behind the charts for each year.

9 A. I need a moment to analyze the data.

10 MR. BOOTH: Maybe I can save time. I would move
11 Defendants' Exhibit 1214 into evidence, and I would be happy to
12 prove to Mr. Mastro after court today or tomorrow that this is
13 actually from the Web site, if that's a concern.

14 THE COURT: Is there an objection or do you want an
15 opportunity to have it proved to you, Mr. Mastro?

16 MR. MASTRO: I would, based on the witness's
17 testimony, like to have the opportunity to discuss it with Mr.
18 Booth, but I will certainly have an open mind, your Honor.

19 THE COURT: Let's do that.

20 MR. BOOTH: That will save us time.

21 THE COURT: We are grateful for saving time. How much
22 longer with the witness?

23 MR. BOOTH: Five, six, maybe ten.

24 THE COURT: Days, weeks or hours?

25 MR. BOOTH: Minutes.

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Elena - cross

1 THE COURT: That's the right answer.

2 I am teasing you, you understand.

3 MR. BOOTH: Yes, your Honor. I always believe you do.

4 BY MR. BOOTH:

5 Q. Ms. Elena, just so we can save time, if you would briefly
6 look back at tabs 6 and 7 of the book I gave you that have the
7 words "Transparency International" on them.

8 If in fact these documents come from the Web site
9 Transparency International, would you consider them to be
10 reliable documents for the materials they discuss, for the
11 issues they discuss?

12 A. I think that this is the global barometer, not the global
13 corruption barometer related to the judiciary. So probably
14 what you're looking at and is included in this chart is the
15 global that includes not only the judiciary but the entire
16 government. So I decided to use the specific indicator related
17 to the judiciary.

18 Q. And if in fact these documents actually are from
19 Transparency International, actually from their Web site, you
20 would consider these documents to be reliable for the
21 information they contain, correct?

22 A. Yes.

23 MR. BOOTH: Again, I will do the same thing with
24 those, your Honor.

25 THE COURT: Good.

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Elena - cross

1 Q. Last area of questioning. Can you turn to page 17 of your
2 witness statement, paragraph 40.

3 Are you with me? Are you there?

4 A. 17, yes.

5 Q. There is a discussion about a case involving *El Universo*
6 and a Judge Paredes. Are you on that same paragraph in your
7 witness statement?

8 A. Yes.

9 Q. You use this example in discussing the Ecuadorian judiciary
10 in your witness statement, is that right?

11 A. Yes.

12 Q. If you look at the footnote, it indicates this information,
13 I suppose, became public about April 24, 2012, is that right?

14 A. Footnote 31, yes?

15 Q. Yes. Footnote 31, yes.

16 I am going to ask you just a couple of things about
17 that. You mentioned this case. This is a case that involved
18 President Correa in Ecuador. He was suing the *El Universo*,
19 which was a newspaper business, right?

20 A. Yes.

21 Q. And the issue there, or what came out in the press there in
22 April of 2012 was that one judge secretly recorded the other
23 judge, Judge Paredes, admitting that he had not actually
24 written the judgment in the case, correct?

25 A. Yes.

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Elena - cross

1 Q. In fact, what he said was he had been given the judgment on
2 a pen drive, that he had then used to put in his computer and
3 make a few changes, and then pretend it was his. That's what
4 the story was about, correct?

5 A. Can you rephrase your question?

6 Q. Yes. I have some newspaper articles about it at tab 10.
7 But my question is, in that case, Judge Paredes, who was being
8 taped, admitted on tape that he had received the judgment on a
9 flash drive, or a pen drive is the word they use, and then he
10 had put that in his computer, made a few changes, and signed it
11 as though he had written it. That's what this case is about
12 that you reference in paragraph 40, correct?

13 A. What I am referencing here is what Encalada said related to
14 the case. And I would like to say that I am using the cases
15 just for illustration of my main points, but I did not analyze
16 any legal or judicial records related to the cases. So this is
17 just an illustration of the high politically influenced
18 judicial system in Ecuador is, and that's it. I don't know
19 much about the case itself.

20 MR. BOOTH: Your Honor, we have at tab 11, which is DX
21 1215, DX 1216 at tab 12, DX 1217, and DX 1218, the Spanish and
22 then the English translation of articles from the newspapers
23 related to this topic. I would like to move these into
24 evidence relative to this topic, and I won't ask the witness
25 any more about it.

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Elena - cross

1 THE COURT: Relevant to what topic?

2 MR. BOOTH: Relevant to paragraph 40 of her witness
3 statement, where she gives a specific example of what she
4 indicates is manipulating the judiciary to harass the media.
5 She references some press coverage in footnote 31. And I would
6 move in these, not for the truth of the matters asserted, but
7 as related to the topic she addresses in paragraph 40, and then
8 I would be finished.

9 MR. MASTRO: We are seeing them for the first time so
10 I need to review them.

11 THE COURT: We will take this up tomorrow.

12 Anything else for the witness?

13 Q. With this example that you give us here in paragraph 40 of
14 this judge not writing his own judgment, did you hear about
15 that at the time, were you aware of that when it happened, or
16 when it became public I should say?

17 A. When I did my research to understand the situation related
18 to impartiality in Ecuador, I consulted several sources,
19 documents, studies, the indices, and I came to the conclusion
20 that Ecuador suffers from a severe instability in the judicial
21 system with a lot of problems with the judiciary itself. For
22 example, to form my opinion, it was key to see that in the ten
23 year period that I analyzed, Ecuador had five different supreme
24 courts, four different judicial councils, two different
25 constitutions, and one amendment to the constitution. So these

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1 were aspects that show me the instability of the judiciary in
2 Ecuador that that really was a devastating situation for
3 impartiality.

4 Then I included this case just for illustration, a
5 concrete example of what I was presenting. I did not study the
6 case itself because I conducted a systemic analysis, including
7 the analysis of indices, the institutional arrangements of the
8 system in Ecuador, and a comparative analysis. I did not study
9 the cases *per se* or the cases themselves, but I just included
10 some of them, the ones that were more shocking, just for the
11 purpose of illustrating my points.

12 Q. That wasn't my question. My question was, when this
13 happened in April of 2012, were you aware of it at that time,
14 that a judge had admitted to not writing a verdict, but had in
15 fact just taken it from someone else? Was that something you
16 were aware of in April of 2012 or did you only learn about it
17 later?

18 A. I read articles in the media related to the *Universo* case
19 all the time.

20 Q. On page 17 of your witness statement, what is cited at
21 footnote 31 is actually a press article, correct?

22 Page 17, footnote 31 is actually an article in the
23 press that you relied on to give your example, correct?

24 A. Yes.

25 Q. And this event with Judge Paredes, from your review of the

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1 press materials, this was a big deal in Ecuador when it
2 happened, correct?

3 THE COURT: Ms. Elena, do you live in Ecuador?

4 THE WITNESS: No.

5 THE COURT: Did you live there at the time?

6 THE WITNESS: No.

7 MR. BOOTH: I was very specific in my question. I
8 said, from your review of the press materials you just
9 described, was it?

10 THE COURT: So when I read The New York Times in the
11 morning, I am supposed to decide if something is a big deal in
12 America because I have read something in the paper? I don't
13 think so. Next question.

14 Q. Was this incident in --

15 THE COURT: The New York Times thinks that everything
16 that appears there is a big deal in America, but that's another
17 matter.

18 Q. Last question, was this incident in Ecuador that you write
19 about, that came out in April of 2012, did you see that there
20 were a number of press articles about this event with Judge
21 Paredes?

22 MR. MASTRO: Objection.

23 THE COURT: Sustained.

24 MR. BOOTH: Thank you. No more questions.

25 THE COURT: Thank you.

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Elena - cross

1 Mr. Gomez, anything?

2 MR. GOMEZ: Just a few, your Honor.

3 CROSS-EXAMINATION

4 BY MR. GOMEZ:

5 Q. Good afternoon, Ms. Elena.

6 A. Good afternoon.

7 Q. Based on the data that you reviewed, is it your opinion
8 that all judges in Ecuador are corrupt?

9 A. No.

10 Q. Based on the data that you reviewed, is it your conclusion
11 that there are no independent or impartial courts in Ecuador?

12 A. I conducted a systemic analysis. So I can tell you that
13 the judicial system in Ecuador is impartial nor independent.
14 And this is what I can say.

15 THE COURT: I think there was a transcription error.

16 Please repeat your answer, Ms. Elena.

17 A. I conducted a systemic analysis, and what I can say is that
18 the judicial system in Ecuador is not impartial and is not
19 independent.

20 Q. Is it your professional opinion, Ms. Elena, that there are
21 no independent or impartial courts in Ecuador at all?

22 A. Yes. This is what I said, that Ecuador lacks an impartial
23 judicial system.

24 (Continued on next page)

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Elena - cross

1 BY MR. GOMEZ:

2 Q. I'm asking you is it your opinion that there is not a
3 single court in Ecuador that is independent and impartial.

4 MR. MASTRO: Objection. Asked and answered.

5 THE COURT: Sustained.

6 Q. Ms. Elena, you testified that you were paid \$300 an hour
7 for your work in this case. That's correct, right?

8 A. Yes.

9 Q. Before you worked on this matter, had you ever been paid
10 \$300 per hour for your services by anyone?

11 A. No. This is not a way that I get paid by hour.

12 Q. What's normally the way that you get paid?

13 A. I have a salary, a monthly salary, and I also get paid on a
14 daily rate.15 Q. What has been your average monthly salary prior to your
16 work in the Chevron case?17 A. I work in Argentina, and we have two different conversion
18 rates, so I really don't know how to answer that question. I
19 can estimate following the official rate, which is not the
20 market dollar price, but it's complex.21 Q. I'm sorry. Can you estimate using Argentinian currency
22 what your average monthly salary would be?23 A. Yes. It's a part-time job, and I make 25,000 Argentinian
24 pesos a month.

25 MR. GOMEZ: No further questions, your Honor.

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Elena - cross

1 THE COURT: Thank you. Mr. Mastro?

2 MR. MASTRO: Your Honor, no further questions. Thank
3 you, Ms. Elena.

4 THE COURT: The witness is excused. Thank you.

5 (Witness excused)

6 THE COURT: All right. That takes care of the
7 testimony for today. What is on tap for tomorrow. Mr. Mastro?

8 MR. MASTRO: Your Honor, we look forward to welcoming
9 Mr. Zambrano to New York.

10 THE COURT: How long do you expect to be with him?

11 MR. MASTRO: Your Honor, with the translation issues,
12 and the experience we had over the weekend, I think that I will
13 take the better part of if not the entire day.

14 THE COURT: On the other side?

15 MR. BOOTH: Half a day. I would estimate half a day.

16 MR. GOMEZ: Yes, your Honor. I will estimate,
17 depending on how it goes, either half a day or a quarter.

18 MR. MASTRO: And I will do my best, your Honor, to go
19 faster. I intend to ask only yes or no questions, but the
20 witness doesn't always --

21 THE COURT: You don't have to go any further. So we
22 are looking at the better part of two days, is that right?

23 MR. GOMEZ: I think that's fair, your Honor.

24 THE COURT: OK.

25 Now, let's get the ground rules straight. All right?

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1 There are no speaking objections by either side during his
2 testimony. "Objection" is OK. "Objection to form" is OK.
3 "Privilege" is OK. Beyond that, nothing gets said in front of
4 the witness except at the side bar. You can ask for a side
5 bar, which I may or may not grant. I want to hear what this
6 man has to say, period, not what whatever else the lawyers want
7 to say, which I will hear in an appropriate setting.

8 Now, a separate question. In my opinion, which I
9 think was dated October 10, I granted certain sanctions unless
10 documents -- all documents from Ecuador responsive to the
11 requests enumerated in footnote 183 -- were produced by October
12 24 of this year. Were they produced?

13 MR. MASTRO: No, your Honor.

14 THE COURT: Mr. Friedman?

15 MR. FRIEDMAN: I have no indication they were
16 produced, your Honor.

17 THE COURT: Mr. Gomez?

18 MR. GOMEZ: No, your Honor.

19 THE COURT: All right. That ruling subject to the
20 motion for reconsideration stands on that point.

21 Then I will see counsel and Mr. Gowan in the robing
22 room.

23 (In the robing room)

24 THE COURT: Be seated, folks.

25 There was apparently an incident, at least it was so

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1 reported to me, on October 31, Mr. Gowan, involving you and
2 Ms. Lachter, the attorney for Mr. Shinder. I am going to say
3 to you exactly what I said to her. I want you to tell me
4 exactly what happened, on the understanding that you are making
5 a statement to a federal judicial official and that any false
6 statement may be prosecutable under 18 U.S. Code 1001. That's
7 what I said to her at page 1526 of the transcript. Please
8 respond.

9 MR. GOWAN: Yes, your Honor. I had two conversations
10 with Ms. Lachter. First, in the morning I introduced myself
11 and got her card. I have her card with me today. Then at the
12 break I consulted with my client, who is Aaron Page, about her
13 client's testimony about the final 15 minutes of the meeting,
14 or the latter end of the meeting where her client ha claimed
15 that Mr. Donzinger was present. I asked her that I suspected
16 that that testimony was false, and I asked her if she wouldn't
17 mind checking it with her client. She said to me who are you?
18 Probably in the middle of that she said who are you, and I said
19 my name is Chris Gowan and she said who do you represent, and I
20 said I'm on the side of Mr. Donzinger, employment to him.

21 THE COURT: Was anything else said by either of you?

22 MR. GOWAN: I don't -- not that I recall, no.

23 THE COURT: Did you use the word perjury in either
24 conversation?

25 MR. GOWAN: I don't believe I did. I understand she

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1 said that I used that word, but I may have used that word when
2 I was talking to Aaron Page next to me. But I very clearly
3 said to her that I asked her if she could check the testimony
4 by her client on that one issue. This is something that as a
5 criminal defense lawyer we do all the time. This is a common
6 occurrence for me in my practice.

7 THE COURT: Did you say to her in words or in
8 substance I suggest you tell your client to rethink that
9 testimony that Donzinger was in the room because that's
10 perjury?

11 MR. GOWAN: That is certainly not my recollection.
12 Absolutely not.

13 THE COURT: OK. Anybody want to add anything,
14 including you, Mr. Gowan? I did receive your letter, which I
15 will docket.

16 MR. GOWAN: I conferred with lead counsel, my client,
17 and I am not aware of any rule that I'm breaking, that I
18 violated by my conduct, but if I did, I would ask your Honor
19 for some guidance, and I certainly will confer with lead
20 counsel on all matters before I speak to counsel.

21 THE COURT: Well, you might consult the Rules of
22 Professional Responsibility in so far as they have to do with
23 threatening criminal proceedings for the purpose of gaining an
24 advantage in civil litigation.

25 Thank you, folks.

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1 MR. FRIEDMAN: Could I bring up just a minor
2 procedural point? We could have done this outside but --

3 THE COURT: All right.

4 MR. FRIEDMAN: My impression is that Chevron will be
5 done with its case sometime this week.

6 THE COURT: Well, I was hoping that. I'm not sure
7 it's true anymore.

8 MR. MASTRO: It's still our intention to try to do
9 that, your Honor. I did not expect that it would be as long a
10 process questioning Mr. Zambrano, but I suspect now it will be
11 longer than I would have had to do before, given the nature of
12 translation and all of that.

13 MR. FRIEDMAN: My point is simply this, your Honor:
14 It would be our intent to make a JMOL motion at the end of the
15 case, or at the end of their case. I wonder if we could
16 reserve filing a written motion sometime later than that, in
17 other words, not have to file it as soon as they close their
18 case.

19 THE COURT: You can make a JMOL without filing papers.

20 MR. FRIEDMAN: I know that, but I would like to file
21 something, and I don't think we will have it done by the time
22 they close their case.

23 THE COURT: Look, I don't think it's a useful
24 exercise, to tell you the truth.

25 MR. FRIEDMAN: OK.

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1 THE COURT: You will make the motion. I will reserve
2 or I will rule on it, and we're going to go on with the defense
3 case.

4 MR. FRIEDMAN: Absolutely.

5 THE COURT: Unless I hear something that I don't
6 expect to be hearing.

7 MR. FRIEDMAN: Fair enough. Thank you.

8 MR. MASTRO: Just so the court knows, we will go back
9 tonight and try to pare back our witness list even more.

10 THE COURT: OK.

11 MR. GOMEZ: Just one issue. This weekend during the
12 Zambrano deposition there were a number of translations that I
13 thought were inaccurate. And I was wondering -- and I suppose
14 I could talk to the court reporter after we are done -- if
15 there is some way of preserving the audio of the Spanish
16 response in the event we have an issue with the translation.
17 The official record is obviously the transcription by the court
18 reporter, but there is no way then to go back after the fact
19 and confirm through some other means whether the response that
20 was given in Spanish, what it was.

21 So I don't know if there is a way of recording the
22 audio of the Spanish that's actually spoken by the witness so
23 that we can have a record of that for future use, if necessary.
24 If your Honor knows of some procedure in the court, I don't
25 know, but I certainly can confer with the court reporter after

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1 about that, but there was an issue in the deposition. And we
2 did have the videotape of the deposition that we can use, but
3 we won't have that in court.

4 MR. MASTRO: I mean, your Honor, there is a video so
5 there is an audio associated with the video.

6 THE COURT: From the deposition, I understand. Do you
7 have a proposal to deal with this?

8 MR. MASTRO: I will be happy to talk to Mr. Gomez. He
9 made a record of three or four, maybe one or two instances
10 where he raised a point about the translation. And sometimes
11 there was colloquy about it. I think the record is pretty
12 clear where he raised a translation issue, very few instances,
13 and the special master dealt with it. But the video and audio
14 related to the video should capture all of that.

15 THE COURT: As to the deposition. It doesn't capture
16 it as to the trial.

17 MR. GOMEZ: The trial.

18 THE COURT: Can you confer and see if you can in some
19 way satisfy one another on this? As a general proposition I
20 know that I always instruct juries in cases involving
21 translations that it is the translation that is the evidence.
22 You have a sworn interpreter, and there it is.

23 In close to 20 years on the bench I have tried cases
24 with interpreters dealing with an astonishing number of
25 languages, some of which I never previously heard of. There

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1 have been almost no translation issues at trial.

2 The one I remember best -- and possibly there is a
3 precatory significance -- was a commercial case in which one
4 side or the other -- it was a Frenchman, and I think the
5 essence of the claim was that the Frenchman had been guiled
6 into a deal inappropriately by the fast-talking
7 English-speaking Americans, and he did not fully understand the
8 language or what he was doing. I think that was the argument.
9 It was something like that. And what I remember is that at
10 some point in the course of the trial, in which this particular
11 witness testified in French through an interpreter, there was a
12 big hullabaloo about the accuracy of the translation. And as
13 the colloquy of counsel roared on, the witness on the witness
14 stand just turned to me and said in perfect English "We could
15 have avoided all the of this if they had let me testify in
16 English."

17 Now, whether that has any application here, I have no
18 idea, but there we are. I hope you can work this out. Never
19 in my experience has there ever been an audio recording of
20 testimony.

21 MR. MASTRO: And, your Honor, I think we have
22 excellent translators. The translator on Friday and Saturday
23 was the same one that both parties have used for their private
24 translations in depositions.

25 THE COURT: So, all right. Look, obviously if there

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1 is an issue about a translation, you are at liberty to bring it
2 to my attention, and the chances are it will be resolved with a
3 colloquy with the translator. And if it isn't, we will
4 confront any such problem. But I'm hoping that we're not going
5 to get to that point.

6 MR. MASTRO: Understood. Thank you, your Honor.

7 THE COURT: Thank you.

8 (Trial adjourned to November 5, 2013 at 9:30 a.m.)

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20 PLAINTIFF EXHIBITS

| 21 | Exhibit No. | Received |
|----|----------------|----------|
| 22 | 5600 | 1399 |
| 23 | 3900 | 1550 |

DEFENDANT EXHIBITS

| Exhibit No. | Received |
|---------------|----------|
| 1388 | 1480 |
| 1387 | 1506 |
| 5609 | 1507 |
| 1208 | 1561 |
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